THE YEAR IN REVIEW 2013

SELECTED CASES FROM THE ALASKA SUPREME COURT, THE ALASKA COURT OF APPEALS, THE UNITED STATES SUPREME COURT, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA, AND THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INTRODUCTION

The *Alaska Law Review*'s Year in Review is a collection of brief summaries of selected state and federal appellate cases concerning Alaska law. They are neither comprehensive in breadth, as several cases are omitted, nor in depth, as many issues within individual cases are omitted. Attorneys should not rely on these summaries as an authoritative guide; rather, they are intended to alert the Alaska legal community to judicial decisions from the previous year. The summaries are grouped by subject matter.

ADMINISTRATIVE LAW

Top

Alaskan Crude Corp. v. State

In *Alaskan Crude Corp. v. State*,[1] the supreme court held that the Oil and Gas Conservation Commission ("Commission") can deny an oil and gas exploration facility's application for an exemption from oil discharge requirements.[2] Alaskan Crude applied to the Commission to reopen a well for exploration.[3] Statutes mandated that oil exploration facilities have a discharge prevention plan, but exempted gas exploration facilities from the requirement.[4] A gas exploration facility, according to the statutes, has the sole purpose of exploring for natural gas.[5] Therefore, the Commission rejected Alaskan Crude's request for the discharge exemption because it found Alaskan Crude's facility to not be a gas facility.[6] On appeal, Alaskan Crude challenged the Commission's facility classification.[7] The supreme court affirmed the lower court's decision, reasoning that a court should defer to an agency's factual findings supported by substantial evidence.[8] Accordingly, because Alaskan Crude represented that it would explore for oil as well as gas, and because Alaskan Crude also planned to keep any oil it recovered while exploring for

[1] 309 P.3d 1249 (Alaska 2013).
[2] *Id.* at 1251.
[3] *Id.*
[4] *Id.* at 1252.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 1253.
[8] *Id.* at 1254.

gas, the Commission could classify the facility as one not solely used for the exploration of gas.[9] Affirming the lower court's decision, the supreme court held that the Commission can deny an oil and gas exploration facility's application for an exemption from oil discharge requirements.[10]

Bachner Co. v. Weed

In *Bachner Co. v. Weed*,[11] the supreme court held that suits against individual procurement officers for good-faith acts performed within the course and scope of their official duties are barred by the exclusive remedy statute.[12] Bachner Company and Bowers Investment Company (together the "Companies") bid for a state building contract but did not receive it.[13] Four members of the procurement committee for the contract were involved in irregularities while operating the bid scoring process.[14] These irregularities included making untrue statements and changing scores to correct for perceived bias.[15] The Companies sued the committee members in their individual capacities.[16] On appeal, the Companies argued that the exclusive remedy statute did not bar their suits because the committee members' conduct demonstrated bad faith.[17] The supreme court affirmed the lower court's decision, reasoning that these particular irregularities did not indicate bad faith.[18] The court further reasoned that, because the acts constituting the irregularities were performed in the course and scope of the committee members' official duties, the Companies' suits could be characterized as a claim against an agency.[19] Affirming the lower court's decision, the supreme court held that the exclusive remedy statute bars suits against individual procurement officers for good-faith acts performed within the course and scope of their official duties.[20]

Griswold v. Homer City Council

In *Griswold v. Homer City Council*,[21] the supreme court held that a municipality that expends significant resources responding to a public records request acts reasonably and in good faith even when the request is not fully complied with.[22] In 2008, the Homer City Council approved a bond proposition and issued an election brochure to go with it.[23] Griswold, alleging the brochure constituted an illegal use of municipal funds to influence a ballot measure, filed a public records request for emails and documents relating to the brochure with the City Manager.[24] The Manager

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[9] *Id.* at 1256.
[10] *Id.* at 1258.
[11] 315 P.3d 1184 (Alaska 2013).
[12] *Id.* at 1194.
[13] *Id.* at 1187.
[14] *Id.* at 1187–88.
[15] *Id.* at 1191–94.
[16] *Id.* at 1187.
[17] *Id.* at 1188.
[18] *Id.* at 1191–94.
[19] *Id.* at 1194.
[20] *Id.*
[21] 310 P.3d 938 (2013).
[22] *Id.* at 941.
[23] *Id.* at 939.
[24] *Id.* at 940.

eventually produced all of the emails requested, except privileged emails or those that had been routinely deleted.[25] The lower court noted that the Manager need only "make a good faith and reasonable effort to locate records," which was supported by the fact that the Manager not only purchased state of the art record retrieval software but spent nearly six months complying with Griswold's request.[26] On appeal, Griswold argued that the Manager had not fully complied with his request, that the email search was inadequate and that the City had unlawfully failed to preserve public records.[27] The supreme court affirmed the lower court's decision, adopting the aforementioned reasoning as well.[28] The court further reasoned that the Manager's compliance was reasonable because the Manager had spent approximately fifty hours responding to Griswold and that it would have cost the city an additional five to ten thousand dollars to fully comply with Griswold's request.[29] Affirming the lower court's decision, the supreme court held that where a municipality expends significant resources responding to a public records request, it does so reasonably and in good faith even when the request is not fully complied with.[30]

L Street Investments v. Municipality of Anchorage

In *L Street Investments v. Municipality of Anchorage*,[31] the supreme court held that the voting requirements of Alaska Statute 29.35.450(c) do not apply to special assessment districts.[32] In 1997, the Anchorage Assembly created Special Assessment District 1 SD97. [33] While this assessment district originally included the building at 420 L Street, a property owned by L Street Investments, the property was eventually carved out of the district.[34] Nevertheless, in 2010, the Assembly renewed and expanded the district to include the property.[35] L Street Investments filed a complaint for declaratory judgment against the municipality claiming that the voting rules required by the statute to expand an assessment district were not followed.[36] The supreme court affirmed the lower court's decision, reasoning that Alaska Statute 29.35.450(c) was inapplicable to assessment districts since they were creatures of pure municipal law.[37] Thus, according to the court, the statute's voting requirements did not need to be followed to expand the assessment district to include L Street Investments' property.[38] Affirming the lower court's decision, the supreme court held that the voting requirements of Alaska Statute 29.35.450(c) do not apply to special assessment districts.[39]

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[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.* at 941.
[29] *Id.*
[30] *Id.*
[31] 307 P.3d 965
[32] *Id.* at 973.
[33] *Id.* at 967.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 966–67.
[37] *Id.* at 973.
[38] *Id.*
[39] *Id.*

Rollins v. State, Dep't of Public Safety

In *Rollins v. State, Dep't of Public Safety*,[40] the supreme court held that the owner of a commercial liquor license has the burden of proof when challenging a decision from the Alcohol Beverage Control Board (the "Board") denying a waiver of the annual operating requirements.[41] In 1990, Rollins purchased a liquor license.[42] Each year from 1991 to 1994, Rollins applied for, and was granted, a waiver of the annual operating requirement, which required operation of at least thirty eight-hour days a year.[43] In 1995, Rollins applied again but was denied a waiver by the Board.[44] Rollins sued and eventually agreed to a settlement granting her a waiver for 1995 but barring the issuance of any future waivers without a showing of good cause.[45] In 2010, Rollins applied for another waiver, which the Board denied.[46] On appeal, Rollins argued that the Board should have the burden of proof to show that she had not satisfied the operating requirement.[47] The supreme court affirmed the lower court's decision, reasoning that having the requirement waived was a privilege.[48] Thus, according to the court, Rollins properly had the burden of proof to show either that the requirement was met or that there was good cause for it not being met.[49] Affirming the lower court's decision, the supreme court held that the owner of a commercial liquor licensee has the burden of proof when challenging a decision from the Board denying a waiver of the annual operating requirements.[50]

Sosa De Rosario v. Chenega Lodging

In *Sosa De Rosario v. Chenega Lodging*,[51] the supreme court held that in reviewing claims, the Workers' Compensation Appeals Commission (the "Commission") must defer to the Workers' Compensation Board's (the "Board") credibility determinations.[52] Rosario fell when working at Chenega Lodging ("Chenega"), experienced a back injury and subsequently received temporary disability benefit payments from Chenega.[53] Rosario's physician reported that her injury resulted from her fall at work and that her injury would be chronic.[54] However, Chenega's independent medical evaluator concluded that Rosario's condition was caused by age-related degenerative changes.[55] Chenega and Rosario then appeared before the Board, which decided that Rosario did suffer a compensable work-related injury.[56] The Commission later reversed the Board's decision,

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[40] 312 P.3d 1091 (Alaska 2013).
[41] *Id*. at 1092.
[42] *Id.* at 1093.
[43] *Id*.
[44] *Id.*
[45] *Id.* at 1094.
[46] *Id.*
[47] *Id.* at 1095.
[48] *Id.*
[49] *Id.*
[50] *Id*. at 1092.
[51] 297 P.3d 139 (Alaska 2013).
[52] *Id.* at 141.
[53] *Id.*
[54] *Id.* at 142.
[55] *Id.*
[56] *Id.* at 144.

concluding that there was insufficient evidence to support the Board's findings.[57] On appeal, Chenega argued that the Board improperly ignored one of its doctor's testimony during the initial hearing because it found the doctor's testimony not credible.[58] The supreme court reversed the Commission's decision, reasoning that it is the Board's responsibility to be the fact finder and determine credibility in these hearings.[59] Thus, according to the court, the Commission could not reverse the Board's credibility findings as it did here and the doctor's testimony could be given little weight.[60] Reversing the Commission's decision, the supreme court held that in reviewing claims, the Commission must defer to the Board's credibility determinations.[61]

State v. Estrada

In *State v. Estrada*,[62] the supreme court held that the Board of Fisheries (the "Board") may enact regulations that allow the Department of Fish and Game (the "Department") to specify limitations on fishing through the issuance of fishing permits.[63] The Board was given authority to adopt regulations for conserving and developing fisheries.[64] Accordingly, it promulgated regulations that required fishermen to obtain permits from the Department, also giving the Department authority to impose conditions upon said permits.[65] When the Department discovered that the sockeye salmon population had fallen dangerously low, it reduced the annual catch limit for sockeye salmon.[66] Subsequently, Estrada and two other fishermen were charged with violating terms of their fishing permits by exceeding this limit.[67] On appeal, the fishermen argued that the Board exceeded its authority by delegating the aforementioned decision-making to the Department.[68] The supreme court reversed the lower court's decision, reasoning that courts should generally defer to an administrative agency's statutory interpretation.[69] Thus, according to the court, since such challenged authority was ultimately a question of legislative intent, the Board's interpretation must prevail since analogous authority had been exercised without intervention from the legislature for decades.[70] Reversing the lower court's decision, the supreme court held that the Board may enact regulations that allow the Department to specify limitations on fishing through the Department's issuance of fishing permits.[71]

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[57] *Id.*
[58] *Id.* at 145.
[59] *Id.* at 146.
[60] *Id.* at 145–47.
[61] *Id.* at 141.
[62] 315 P.3d 688 (Alaska 2013).
[63] *Id.* at 690.
[64] *Id.*
[65] *Id.*
[66] *Id.* at 691.
[67] *Id.*
[68] Id. at 693.
[69] *Id.* at 694.
[70] *Id.*
[71] *Id.*

Brown v. Knowles

In *Brown v. Knowles*,[72] the supreme court held that an employee's veil-piercing claim is not barred during the corporation's bankruptcy proceedings.[73] Brown, the sole shareholder of International Steel, entered into an agreement with Knowles, an employee, for a bonus compensation package but eventually stopped paying.[74] Knowles subsequently filed suit against International Steel and Brown in the lower court one day before International Steel filed for Chapter 11 bankruptcy protection.[75] In the lower court, Knowles received a monetary award.[76] On appeal, Brown argued that Knowles' veil-piercing claim was barred by International Steel's bankruptcy proceedings.[77] The supreme court affirmed the lower court's decision, reasoning that International Steel, and not Brown, was the debtor in the bankruptcy proceedings.[78] Thus, according to the court, since the veil-piercing claim was against Brown and not the corporation, Brown was not entitled to bankruptcy protection since he never filed for bankruptcy.[79] Affirming the lower court's decision, the supreme court held that an employee's veil-piercing claim is not barred during the corporation's bankruptcy proceedings.[80]

McCarter v. McCarter

In *McCarter v. McCarter*,[81] the supreme court held that, without filing a motion for relief from judgment, the court will not modify an agreement that has previously been incorporated into a final dissolution decree.[82] Deborah McCarter filed a motion in the lower court for enforcement of a property agreement that was incorporated into her divorce decree with her ex-husband, David.[83] The lower court granted Deborah's motion.[84] On appeal, David argued that, due to inaccuracies contained in the agreement, the lower court erred in failing to modify it.[85] The supreme court affirmed the lower court's decision, reasoning that the court could not modify the contract on a piecemeal basis when the parties' property rights had previously been adjudicated and incorporated into a final judgment.[86] Thus, without a separate filing of a motion for relief from judgment, the court's job was to interpret and enforce the agreement based on the principles

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[72] 307 P.3d 915 (Alaska 2013).
[73] *Id.* at 919–20.
[74] *Id.* at 920–21.
[75] *Id.* at 921.
[76] Id. at 921–23.
[77] *Id.* at 927–28.
[78] *Id.*
[79] *Id.* at 928.
[80] *Id.* at 919–20.
[81] 303 P.3d 509 (Alaska 2013).
[82] *Id.* at 515.
[83] *Id.* at 512.
[84] *Id.*
[85] *Id.* at 512, 515.
[86] *Id.* at 515.

of contract law.[87] Affirming the lower court's decision, the supreme court held that the court will not modify an agreement that has previously been incorporated into a final dissolution decree without the filing of a motion for relief from judgment.[88]

Tesoro Corp. v. State, Dep't of Revenue

In *Tesoro Corp. v. State, Dep't of Revenue*,[89] the supreme court held that parent corporations maintaining significant oversight of its subsidiaries are subject to taxation under the unitary business apportionment method.[90] Between 1969 and 1994, Tesoro's operations in Alaska were treated as a unitary business and taxed as such.[91] However in 1995, its purchase of the Kenai Pipeline ("KPL") made Tesoro "engaged in the transportation of oil or gas by pipeline," subjecting itself to additional taxation.[92] To avoid some of this new tax, Tesoro claimed that some of its subsidiaries (including KPL) were not unitary and, accordingly, only those non-unitary business segments were subject to this additional tax.[93] On appeal, Tesoro argued that the administrative law judge erred because of the corporation's passive investment approach regarding the aforementioned subsidiaries.[94] The supreme court affirmed the administrative judge's decision, reasoning that Tesoro's provision of credit facilities, financing, oversight, guidance and central management to its subsidiaries rendered it, and all of the subsidiaries at issue, a unitary business.[95] These interactions, according to the court, demonstrated Tesoro's continued control and influence over its subsidiaries, which resulted in considerable savings.[96] Affirming the administrative law judge's decision, the supreme court held that parent corporations maintaining significant oversight of its subsidiaries are subject to taxation under the unitary business apportionment method.[97]

CIVIL PROCEDURE

Top

Alaskan Adventure Tours v. City and Borough of Yakutat

In *Alaskan Adventure Tours v. City and Borough of Yakutat*,[98] the supreme court held that when ruling on a motion for relief from judgment based on fraud, the lower court may require a showing that the fraud could not have been discovered by due diligence before or during trial.[99] In 2010, Yakutat filed suit against Adventure Tours for fraudulent conveyance of its assets to

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[87] *Id.*
[88] *Id.*
[89] 312 P.3d 830 (Alaska 2013).
[90] *Id.* at 833–34.
[91] *Id.* at 834–35.
[92] *Id.* at 835.
[93] *Id.*
[94] *Id.* at 838.
[95] *Id.* at 839–41.
[96] *Id.* at 841–42.
[97] *Id.* at 833–834.
[98] 307 P.3d 955 (Alaska 2013).
[99] *Id.* at 960.

avoid payment of taxes that it owed.[100] After finding that Adventure Tours had notice that it owed taxes at the time it transferred the assets, the lower court ruled against them.[101] Subsequently, Adventure Tours motioned the court for relief from this judgment under Rule 60(b)(3), claiming that one of Yakutat's witnesses had lied about a conversation with the owner of Adventure Tours.[102] This conversation was one of the ways that Yakutat had demonstrated Adventure Tours had notice of the taxes it owed prior to transferring the assets.[103] On appeal, Adventure Tours argued that the lower court had applied the wrong standard by requiring them to prove that the fraud could not have been timely shown during the fraudulent conveyance trial.[104] The supreme affirmed the lower court's decision, reasoning that Rule 60(b)(3) was not meant to be a backup plan for litigants that failed to adequately investigate their case or cross-examine an adverse witness the first time around.[105] Rather, Rule 60(b)(3) was meant to provide relief for parties who were unable to fully and fairly litigate their original case.[106] Affirming the lower court's decision, the supreme court held that when a movant had ample opportunity to uncover or demonstrate the alleged fraud or perjury during trial, relief under Rule 60(b)(3) may be denied.[107]

American Marine Corp. v. Sholin

In American Marine Corp. v. Sholin,[108] the supreme court held that the State's savings statute does not require timely notice.[109] In 2005, Sholin was provided medical services by American Marine Corporation (the "Corporation").[110] The Corporation asserted that Sholin's insurer had given them oral authorization to provide the services.[111] Nevertheless, Sholin's insurer subsequently denied the Corporation's requests for payment.[112] In response, the Corporation commenced an action for breach of contract against Sholin and her insurer.[113] The lower court initially dismissed the claim for lack of service, prompting the Corporation to re-file the lawsuit almost a full year later.[114] The lower court then granted summary judgment to the defendant since the defendant was not notified of the Corporation's initial claim until after the statute of limitations had run.[115] On appeal, the Corporation argued that the plain meaning of the savings statute allowed for a timely filed action not dismissed on its merits to be re-filed within one year

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[100] *Id.* at 957–58.
[101] *Id.* at 958.
[102] *Id.* at 958–59.
[103] *Id.*
[104] *Id.* at 960–61.
[105] *Id*. at 961.
[106] *Id.*
[107] *Id.*
[108] 295 P.3d 924 (Alaska 2013).
[109] *Id.* at 926–27.
[110] *Id.* at 925.
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.* at 926.
[115] *Id.*

of the initial action regardless of timely notice.[116] The supreme court reversed the lower court's decision, reasoning that the savings statute plainly did not require timely notice.[117] The court further reasoned that the purpose of the savings statute was to "facilitate resolution of suits on the merits."[118] Reversing the lower court's decision, the supreme court held that the State's savings statute does not require timely notice.[119]

Bearden v. State Farm Fire & Casualty Co.

In *Bearden v. State Farm Fire & Casualty Co.*,[120] the supreme court held that pleading no contest to a disorderly conduct charge collaterally estops re-litigating the essential elements of that crime in a civil declaratory judgment action regarding insurance coverage.[121] After a physical altercation with an acquaintance, Bearden pled no contest to disorderly conduct, which is a serious criminal offense.[122] A civil complaint stemming from the same incident was subsequently filed against Bearden who, in turn, looked to his insurance for coverage.[123] On appeal, Bearden argued that he acted in self-defense.[124] The supreme court affirmed the lower court's decision, reasoning that pleading no contest when given the opportunity for a full and fair hearing necessarily meant the absence of self-defense had been decided.[125] Thus, according to the court, Bearden could not rely on the insurance policy for coverage.[126] Affirming the lower court's decision, the supreme court held that pleading no contest to a disorderly conduct charge collaterally estops re-litigating the essential elements of that crime in a civil declaratory judgment action regarding insurance coverage.[127]

Chloe O. v. State, Dep't of Health & Social Services

In *Chloe O. v. State, Dep't of Health & Social Services*,[128] the supreme court held that when reviewing a lower court's holding that was made during a new hearing, review is based only on the evidence before the court during the new hearing.[129] The Office of Children Service ("OCS") filed suit to terminate Chloe's parental rights based on her history of drug abuse, suicide attempts, violent behavior and her predilection towards unsafe people and situations.[130] After a trial, the lower court terminated Chloe's rights.[131] Chloe appealed but during briefing before the supreme court, the parties agreed that the case should be remanded because the lower court had

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[116] *Id.*
[117] *Id.* at 926–27.
[118] *Id.* at 927.
[119] *Id.* at 926–27.
[120] 299 P.3d 705 (Alaska 2013).
[121] *Id.* at 715.
[122] *Id.* at 707, 710.
[123] *Id.* at 707.
[124] *Id.* at 708.
[125] *Id.* at 712.
[126] *Id.* at 708–709.
[127] *Id.* at 715.
[128] 309 P.3d 850 (Alaska 2013)
[129] *Id.* at 856.
[130] *Id.* at 851.
[131] *Id.* at 852.

applied the wrong evidentiary standard to the question of whether OCS had made active efforts to reunify the family.[132] On remand, before a new judge, Chloe asked for and was granted a new evidentiary hearing.[133] Ultimately, the lower court in the new hearing determined, by clear and convincing evidence, that OCS had made extraordinary efforts to reunify the family.[134] On appeal, Chloe argued that the lower court erred because it ignored the testimony of a witness from the first hearing.[135] The supreme court affirmed the lower court's decision, reasoning that the witness' testimony was not before the lower court when it made its ruling on remand.[136] Furthermore, Chloe was adamant that the new judge "not base her decision on a review of the evidence presented to" the first judge.[137] Affirming the lower court's decision, the supreme court held that when reviewing a lower court's holding that was made during a new hearing, review is based only on the evidence before the court during the new hearing.[138]

Dixon v. Blackwell

In *Dixon v. Blackwell*[139], the supreme court held that an ambiguous statement in a closing argument does not constitute a judicial admission.[140] After failing to reach an agreement in arbitration regarding payment of her medical expenses, Dixon filed a complaint against Blackwell.[141] At trial, Blackwell's attorney estimated that Dixon's related medical expenses could be around $17,955, but the jury awarded only $12,710.[142] On appeal, Dixon argued that Blackwell's attorney's estimation of medical expenses constituted a judicial admission and because the jury's verdict was lower than the estimated amount, the amount awarded must necessarily be inadequate.[143] The supreme court affirmed the lower court's decision, reasoning that a judicial admission must be "clear, deliberate, and unequivocal."[144] Here, according to the court, if Blackwell's attorney's estimation of medical expenses is taken in context, it did not meet the aforementioned standard for judicial admissions and, therefore, could not establish the inadequacy of the awarded amount.[145] Affirming the lower court's decision, the supreme court held that an ambiguous statement in a closing argument does not constitute a judicial admission.[146]

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[132] *Id.* at 852.
[133] *Id.*
[134] *Id.* at 855.
[135] *Id.* at 856.
[136] *Id.* at 856, 859.
[137] *Id.* at 856.
[138] *Id.*
[139] 298 P.3d 185 (Alaska 2013).
[140] *Id.* at 187.
[141] *Id.*
[142] *Id.* at 188.
[143] *Id.* at 189.
[144] *Id.*
[145] *Id.*
[146] *Id.* at 187.

Hill v. Giani

In *Hill v. Giani*,[147] the supreme court held that summary judgment is inappropriate where the movant is protected by qualified official immunity subject to a good faith requirement and the nonmovant presents some admissible evidence that the official acted in bad faith.[148] Giani, an independent care coordinator for the State Department of Health and Social Services, filed a Report of Harm (the "Report") against Hill, the owner of an assisted living home for mentally handicapped adults, alleging various forms of abuse.[149] However, while an investigation into the Report revealed that some allegations contained therein were valid, there was no evidence to substantiate the abuse allegations.[150] Subsequently, Hill filed suit against Giani alleging defamation and various other claims.[151] The lower court granted summary judgment for Giani on the basis of statutory immunity.[152] On appeal, Giani argued that the investigation proved the validity of some of the allegations and, in turn, demonstrated Giani's good faith in filing the report.[153] The supreme court reversed the lower court's decision, reasoning that the investigation was not relevant to the issue of Giani's personal good faith in filing the Report.[154] The court further reasoned that Hill provided some admissible evidence that could show bad faith by Giani in filing the Report.[155] Reversing the lower court's decision, the supreme court held that summary judgment is inappropriate where the movant is protected by qualified official immunity subject to a good faith requirement and the nonmovant provides some admissible evidence of bad faith.[156]

Patterson v. Infinity Insurance Co.

In *Patterson v. Infinity Insurance Co.*,[157] the supreme court held that a claim mentioned but not explicitly asserted as a claim in one lawsuit sometimes may not be barred by res judicata in a second suit.[158] In 2008**,** Patterson sued Infinity Insurance Co. ("Infinity"), claiming that they acted in bad faith by failing to timely pay some of Patterson's medical bills after a car accident.[159] The lower court granted Infinity's motion for summary judgment but noted that the embezzlement claim that Patteron's complaint mentioned did not relate to the underlying claims and, consequently, would not be considered.[160] Six months later, Patterson filed a new suit that specifically included the embezzlement claim.[161] On appeal, Infinity argued that Patterson's new

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[147] 296 P.3d 14 (Alaska 2013).
[148] *Id*. at 25–26.
[149] *Id*. at 16, 18.
[150] *Id.* at 18–19.
[151] *Id*. at 19.
[152] *Id*.
[153] *Id.* at 27.
[154] *Id.* 27–28.
[155] *Id*. at 28.
[156] *Id.* 25–26.
[157] 303 P.3d 493 (Alaska 2013).
[158] *Id.* at 498–99.
[159] *Id.* at 495–96.
[160] *Id.* at 496.
[161] *Id.*

suit was barred by res judicata.[162] The supreme court reversed the lower court's decision, reasoning that Patterson's embezzlement claim dealt with a distinct harm from that alleged in the first suit.[163] It was distinct because although there would be some overlapping evidence, the new claim did not stem from conduct resulting from the car accident.[164] Reversing the lower court's decision, the supreme court held that a claim mentioned but not explicitly asserted as a claim in one lawsuit sometimes may not be barred by res judicata in a second suit.[165]

Jackson v. Sey

In *Jackson v. Sey*,[166] the supreme court held that a post-judgment motion for relief from judgment is not subject to dismissal for lack of prosecution under Rule 41(e).[167] In 2008, the lower court granted a divorce to Sey and her husband Jackson after Jackson failed to appear at a hearing telephonically from jail.[168] Jackson subsequently filed a motion for relief from judgment, which would relieve him of the issued divorce obligations.[169] While the lower court allowed limited discovery into the issue, the court ultimately dismissed the motion for lack of prosecution.[170] On appeal, Jackson argued the lower court erred in not considering the merits of his aforementioned motion.[171] The supreme court reversed the lower court's decision, reasoning that lack of prosecution under Rule 41(e) only applies to pending cases.[172] Thus, according to the court, since a final judgment was entered, there could be no lack of prosecution of a pending case.[173] Reversing the lower court's decision, the supreme court held that a post-judgment motion for relief from judgment is not subject to dismissal for lack of prosecution under Rule 41(e).[174]

Schultz v. Wells Fargo Bank, N.A.

In *Schultz v. Wells Fargo Bank, N.A.*,[175] the supreme court held that only a favorable verdict, not the most desired verdict, is necessary to be the prevailing party entitled to attorneys' fees under Alaska Civil Rule 82.[176] The Trust Advisory Committee (the "Committee") sought information on its property insurance premiums and coverage from its trustee, Wells Fargo Bank, N.A. ("Wells Fargo").[177] Unsatisfied with Wells Fargo's responses, the Committee petitioned the lower court for relief and its attorneys' fees, arguing that by failing to provide requested

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[162] *Id.* at 497.
[163] *Id.* at 498–99.
[164] *Id.*
[165] *Id.*
[166] 315 P.3d 674 (Alaska 2013).
[167] *Id.* at 677.
[168] *Id.* at 675.
[169] *Id.*
[170] *Id.* at 676.
[171] *Id.* at 677.
[172] *Id.*
[173] *Id.*
[174] *Id.* at 677.
[175] 301 P.3d 1237 (Alaska 2013).
[176] *Id.* at 1241–42.
[177] *Id.* at 1239.

information, Wells Fargo breached its fiduciary duty.[178] The lower court ultimately found that neither party had clearly prevailed in the action and, consequently, did not award the Committee its attorneys' fees.[179] On appeal, the Committee argued that the lower court misinterpreted Alaska Civil Rule 82.[180] The supreme court reversed the lower court's decision, reasoning that the prevailing party in a civil suit was the party who received a favorable verdict on the case's main issue.[181] Here, since the Committee successfully obtained a court order compelling Wells Fargo to fulfill its fiduciary obligations by surrendering the insurance policy as well as half of the Committee's requested documents, it was the prevailing party entitled to attorneys' fees.[182] Reversing the lower court's decision, the supreme court held that only a favorable verdict is necessary to be the prevailing party entitled to attorneys' fees under Alaska Civil Rule 82.[183]

Steven v. Nicole

In *Steven v. Nicole*,[184] the supreme court held that a court does not abuse its discretion in refusing to cede jurisdiction as an inconvenient forum in a visitation dispute under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") if it provides sufficient reasoning to infer that it considered the relevant statutory factors.[185] Following the couple's divorce in 2004, and in contravention of Nicole's visitation rights, Steven refused to allow Nicole to take the children from Tennessee in May 2012.[186] Nicole filed a motion in Alaska to enforce her visitation rights but failed to pass a timely drug test in order to get custody of the children.[187] The lower court held that Nicole could enforce her rights over Christmas if she passed a drug test one month in advance.[188] On appeal, Steven claimed that the lower court should have voluntarily ceded jurisdiction as an inconvenient forum to Tennessee.[189] The supreme court affirmed the lower court's decision, reasoning that a court must articulate why a motion for inconvenient forum was denied under the UCCJEA by use of the established statutory factors.[190] Thus, according to the court, the lower court's explanation, while not explicitly referring to the aforementioned factors, was satisfactory because it demonstrated that the factors had been considered.[191] Affirming the lower court's decision, the supreme court held that a court does not abuse its discretion in refusing to grant an inconvenient forum motion in a visitation dispute under the UCCJEA if it provides sufficient reasoning to infer that it considered the relevant statutory factors.[192]

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[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.* at 1242.
[182] *Id.* at 1243.
[183] *Id.* at 1241–42.
[184] 308 P.3d 875 (Alaska 2013).
[185] *Id.* at 884.
[186] *Id.* at 878.
[187] *Id.* at 878–79.
[188] *Id.* at 879.
[189] *Id.*
[190] *Id.* at 883–84.
[191] *Id.* at 884.
[192] *Id.*

Barber v. State, Dep't of Corrections

In *Barber v. State, Dep't of Corrections*,[193] the supreme court held that requiring a prisoner to pay filing fees in order to appeal a Department of Corrections ("DOC") disciplinary proceeding is a denial of the prisoner's due process rights when that prisoner has an actual inability to pay.[194] Barber sought judicial review of two DOC disciplinary proceedings.[195] His appeals were rejected because he was unable to pay even the reduced filing fee required by the court.[196] On appeal, Barber argued that the filing fee statute deprived him of his due process rights.[197] The supreme court reversed the lower court's decision, reasoning that Barber had a due process interest in avoiding punitive segregation and in obtaining judicial review of his DOC proceedings.[198] The court further reasoned that without judicial review there was a significant risk of erroneous deprivation of his interests and that the state's legitimate interest in reducing frivolous prisoner litigation did not justify denying Barber his due process right of access to courts.[199] Reversing the lower court's decision, the supreme court held that it is a denial of due process to require a prisoner to pay filing fees that he is actually unable to afford.[200]

Blaufuss v. Ball

In *Blaufuss v. Ball*,[201] the supreme court held that due process rights are not violated by a decision based purely on non-expert testimony when proper notice is received and both parties have the opportunity to present their own evidence.[202] In 2006, Ball filed for divorce from Blaufuss.[203] At trial, Ball stated that he had supported Blaufuss for a number of years while separated but argued that he should no longer be required to do so because of Blaufuss' ability to hold a job as well as her drug abuse problems.[204] Blaufuss' sister, however, explained that Blaufuss suffered from a documented mental illness and was in dire economic straights but provided no supporting documentation.[205] The trial court found that Blaufuss suffered from mental illness and chronic substance abuse, and, consequently, found her unemployable.[206] Accordingly, Ball was ordered to pay Blaufuss spousal support.[207] In 2010, after not receiving

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[193] 314 P.3d 58 (Alaska 2013).
[194] *Id.* at 64–66.
[195] *Id.* at 63.
[196] *Id.* at 62.
[197] *Id.*
[198] *Id.* at 64–66, 69.
[199] *Id.* at 65–66.
[200] *Id.* 66, 69.
[201] 305 P.3d 281 (Alaska 2013).
[202] *Id.* at 287.
[203] *Id.* at 283.
[204] *Id.*
[205] *Id.*
[206] *Id.* at 284.
[207] *Id.*

her payments, Blaufuss moved to find Ball in contempt of court.[208] In response, Ball argued he had been deprived of due process at the divorce trial because the trial court made its decision without any financial or medical documentation supporting Blaufuss' allegations.[209] The lower court agreed with Ball's due process argument.[210] The supreme court reversed the lower court's decision, reasoning that because Ball had received proper notice of the issues to be decided at trial and, furthermore, was not barred from presenting his own evidence at trial, his due process rights were not violated by the trial court's ruling.[211] Reversing the lower court's decision, the supreme court held that due process rights are not violated by a ruling based purely on non-expert testimony when proper notice is received and both parties have the opportunity to present their own evidence.[212]

Debra P. v. Laurence S.

In *Debra P. v. Laurence S.*,[213] the supreme court held that changing a child custody hearing to a final trial without proper notice violates due process.[214] Debra P. and Laurence S. were in dispute over who should have legal and physical custody of their child.[215] The lower court judge ordered an evidentiary hearing on September 21 for an interim order, allowing Debra P. and Laurence S. more time to work towards a settlement.[216] However, at the September 21 hearing, the court granted Laurence S. custody and announced that its order would be final.[217] On appeal, Debra P. argued that the lower court denied her the opportunity to fully present her case by changing the hearing to a final custody trial without giving proper, prior notice.[218] The supreme court reversed the lower court's decision, reasoning that procedural due process required that parties receive proper, prior notice in custody hearings.[219] Here, the lower court's comments would have led most people to believe only interim custody would be determined at the September 21 hearing and the lower court only told the parties its intention to make a final ruling after both parties had made their presentations.[220] Reversing the lower court's decision, the supreme court held that changing a child custody hearing to a final trial without proper notice violates due process.[221]

DesJarlais v. State, Office of the Lieutenant Governor

In *DesJarlais v. State, Office of the Lieutenant Governor*,[222] the supreme court held that the lieutenant governor properly refuses to certify a citizen-proposed initiative when it is clearly

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[208] *Id.*
[209] *Id.* at 284.
[210] *Id.* at 284–85.
[211] *Id.* at 287.
[212] *Id.* at 287.
[213] 309 P.3d 1258 (Alaska 2013).
[214] *Id.* at 1261.
[215] *Id.* at 1259.
[216] *Id.* at 1259–60.
[217] *Id.* at 1260.
[218] *Id.* at 1261.
[219] *Id.*
[220] *Id.*
[221] *Id.*
[222] 300 P.3d 900 (Alaska 2013).

unconstitutional.[223] DesJarlais submitted an initiative to the Office of the Lieutenant Governor that would result in a general ban on abortion.[224] The Lieutenant Governor consulted the Department of Law and concluded that the initiative was unconstitutional and therefore did not circulate it.[225] DesJarlais then filed a complaint in the lower court.[226] The lower court granted summary judgment to the State because a law banning abortion was clearly unconstitutional under controlling federal and state precedents.[227] On appeal, DesJarlais argued that *Roe v. Wade* was not controlling precedent and that the Alaska Constitution required the State to protect the natural rights of all people, including preborn children.[228] The supreme court affirmed the lower court's decision, reasoning that the initiative was clearly unconstitutional under controlling federal and state precedents.[229] Accordingly, stated the court, the lieutenant governor could not act against an established constitutional right and therefore properly denied to circulate the initiative.[230] Affirming the lower court's decision, the supreme court held that the lieutenant governor properly refuses to certify a citizen-proposed initiative when it is clearly unconstitutional.[231]

Heller v. Dep't of Revenue

In *Heller v. Dep't of Revenue*,[232] the supreme court held that the six-month residency requirements necessary to be eligible for the Permanent Fund Dividend ("PFD") cannot be circumvented even when absence is involuntary.[233] In 2005, Heller, a military member, was posted in Alaska and subsequently took several steps to establish residency.[234] Following deployment on August 14, 2005, he did not return to Alaska until December 11, 2006.[235] In 2007, Heller applied for a PFD but was denied for failing to satisfy the six consecutive month residency requirement.[236] On appeal, Heller argued that his deployment was an "allowable absence" under the eligibility requirements.[237] The supreme court affirmed the lower court's decision, reasoning that Heller's interpretation ran contrary to both the plain language of the statute as well as its underlying legislative intent.[238] Because the legislature sought to prevent potential abuses of the PFD by those with no intention of becoming permanent residents of Alaska, the court concluded that the residency requirements could not be circumvented even

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[223] *Id*. at 901.
[224] *Id*.
[225] *Id*. at 901–902.
[226] *Id.* at 902.
[227] *Id*.
[228] *Id.* at 903, 905.
[229] *Id.* at 904.
[230] *Id*. at 905–906.
[231] *Id.* at 901.
[232] 314 P.3d 69 (Alaska 2013).
[233] *Id.* at 84.
[234] *Id.* at 72.
[235] *Id.*
[236] *Id.*
[237] *Id.* at 74.
[238] *Id.* at 74–77.

when absence from the state was involuntary.[239] The court further reasoned that the eligibility requirements were constitutional because they facilitated the State's interest in ensuring that only bona fide residents received PFD payments.[240] Affirming the lower court's decision, the supreme court held that the six-month residency requirements necessary to be eligible for the Permanent Fund Dividend ("PFD") cannot be circumvented even when absence is involuntary.[241]

Moore v. State

In *Moore v. State*,[242] the court of appeals held that the State's sexual abuse statute criminalizing sexually enticing minors online is constitutional.[243] Moore was convicted of online enticement of a minor under the sexual abuse statute after he asked two chat room participants, police officers posing as fourteen-year-old girls, to masturbate for him.[244] Moore appealed his conviction, arguing that the online enticement statute was unconstitutional because it restricted free speech.[245] The statute forbids an adult from enticing, soliciting or encouraging either a child under age sixteen or a person that the offender believes is under age sixteen from engaging in sexual activities with him or her.[246] The court of appeals affirmed the lower court's decision, reasoning that speech restrictions must be narrowly tailored to serve a compelling government interest.[247] Here, the State has a compelling interest in protecting minors from online sexual predators.[248] Furthermore, the statue is not overbroad because it requires the State to prove that the offender intended to cause the child to engage in sexual conduct.[249] Affirming the lower court's decision, the court of appeals held that the State's sexual abuse statute criminalizing sexually enticing minors online is constitutional.[250]

Patrick v. Municipality of Anchorage

In *Patrick v. Municipality of Anchorage*,[251] the supreme court held that due process does not always require a full pre-revocation hearing when an informal opportunity to respond to allegations is presented prior to a license revocation.[252] After Patrick, a taxi-driver, was cited for driving with a suspended license, she repeatedly communicated with the transportation inspector charged with investigating the violation, arguing that she was not driving the vehicle that night.[253] Nevertheless, the transportation inspector revoked her chauffeur license based on his classification of her as a chronic violator.[254] Patrick requested a hearing where her license

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[239] *Id.*
[240] *Id.* at 82.
[241] *Id.* at 84.
[242] 298 P.3d 209 (Alaska Ct. App. 2013).
[243] *Id.* at 211.
[244] *Id.*
[245] *Id.*
[246] *Id.* at 212–13.
[247] *Id.* at 214.
[248] *Id.* at 213.
[249] *Id.*
[250] *Id.* at 219.
[251] 305 P.3d 292 (Alaska 2013).
[252] *Id.* at 300.
[253] *Id.* at 297.
[254] *Id.* at 296–97.

revocation was reaffirmed.[255] On appeal, Patrick argued that her due process rights were violated because her license was revoked prior to a hearing.[256] The supreme court affirmed the lower court's decision, reasoning that Patrick's conversations with the transportation satisfied due process in this instance by giving her sufficient notice that her license was going to be revoked as well as an opportunity to respond to the evidence against her.[257] Affirming the lower court's decision, the supreme court held that due process does not always require a full pre-revocation hearing when an informal opportunity to respond to allegations is presented prior to a license revocation.[258]

State v. Doe A

In *State v. Doe A*,[259] the supreme court held that decisions by two-to-one majorities of the supreme court prior to November 10, 2010, have precedential effect because Appellate Rule 106(b) does not apply retroactively.[260] In 2008, the supreme court held in a two-to-one decision that amendments made in 1998 by the Alaska Legislature to Alaska's Sex Offender Registration Act ("ASORA") violated the State's Ex Post Facto Clause and, accordingly, could not apply to individuals who committed their crimes before those amendments became effective.[261] On November 10, 2010, Appellate Rule 106(b) was promulgated, providing that two-to-one decisions of the supreme court did not have precedential effect.[262] John Doe A and John Doe B were convicted prior to the 1998 amendments of separate crimes requiring them to register and comply with ASORA.[263] After Appellate Rule 106(b) was promulgated, they challenged the application of the 1998 amendments to them on the same Ex Post Facto grounds.[264] On appeal, the State argued that Appellate Rule 106(b) should be given retroactive effect, thus eliminating the precedential value of the 2008 case, because it was a procedural rule and because its post-adoption history demonstrated retroactivity was intended.[265] The supreme court affirmed the lower court's decision, reasoning that Appellate Rule 106(b) was substantive since retroactively eliminating two-to-one decisions as precedent would eliminate rights created by those decisions, implicate public policy decisions and affect the results of future litigants' cases.[266] The supreme court further reasoned that the post-adoption history did not clearly indicate an express intent of retroactive application.[267] Affirming the lower court's decision, the supreme court held that decisions by two-to-one majorities of the supreme court prior to Appellate Rule 106(b)'s promulgation have precedential effect.[268]

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[255] *Id.* at 297.
[256] *Id.*
[257] *Id.* at 300.
[258] *Id.*
[259] 297 P.3d 885 (Alaska 2013).
[260] *Id.* at 886.
[261] *Id.*
[262] *Id.* at 888.
[263] *Id.* at 886.
[264] *Id.* at 885–86.
[265] *Id.* at 889.
[266] *Id.* at 890.
[267] *Id.* at 891.
[268] *Id.* at 886.

Sullivan v. Resisting Envtl. Destruction on Indigenous Lands

In *Sullivan v. Resisting Envtl. Destruction on Indigenous Lands*,[269] the supreme court held that land development statutes limiting the State's evaluation duty to only a single best interest finding (a "BIF") are constitutional.[270] In evaluating the Beaufort Sea Lease Sale Area for potential development, the Department of Natural Resources (the "Department") issued a single BIF in favor of disposing of the land beginning with a phase of lease sales.[271] The Department's actions were pursuant to a recently amended statute that permitted the State to evaluate the environmental, cultural and communal effects of developing land only so far as this first phase of leasing was concerned.[272] Subsequently, Resisting Environmental Destruction on Indigenous Lands ("REDOIL") successfully petitioned the lower court, arguing that the statute was unconstitutional because it did not require subsequent BIFs at each phase of develop.[273] On appeal, the Department argued that the lower court erred in finding that the statute contravened the Alaska Constitution.[274] The supreme court reversed the lower court's decision, reasoning that under the Alaska Constitution the Department's only duty was to maximize the benefit to Alaskans in developing the State's resources.[275] Thus, according to the court, since BIFs were mere legislative conventions to achieve this end, the legislature had broad, constitutional discretion to limit them to the first phase of development.[276] Reversing the lower court's decision, the supreme court held that land development statutes limiting the State's evaluation duty to only a single BIF are constitutional.[277]

Titus v. State, Dep't of Administration

In *Titus v. State, Dep't of Administration*,[278] the supreme court held that suspending a driver's license for failure to carry liability insurance after involvement in a single-vehicle accident was not a violation of equal protection, substantive due process or procedural due process.[279] In 2008, Titus was involved in a single motorcycle accident, resulting in minor personal injuries and damage to his motorcycle.[280] Titus told the responding officer that he had insurance coverage.[281] However, the Department of Motor Vehicles ("DMV") subsequently notified Titus, who in fact did not have insurance, that his license would be suspended for ninety days after failing to provide proof of insurance within fifteen days of the accident.[282] The DMV hearing officer ultimately suspended Titus' license and the lower court upheld this decision.[283] On appeal, Titus

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[269] 311 P.3d 625 (Alaska 2013).
[270] *Id.* at 637.
[271] *Id.* at 626.
[272] *Id.* at 627.
[273] *Id.* at 628.
[274] *Id.* at 632.
[275] *Id.* at 633.
[276] *Id.*
[277] *Id.* at 637.
[278] 305 P.3d 1271 (Alaska 2013).
[279] *Id*. at 1283.
[280] *Id.* at 1274.
[281] *Id*.
[282] *Id.* at 1276.
[283] *Id*.

argued that the suspension was a violation of equal protection as well as substantive and procedural due processes.[284] The supreme court affirmed the lower court's decision, noting that the purpose of the proof-of-insurance statute was to discover and deter uninsured driving.[285] The court reasoned that there was no equal protection issue because all drivers were required to have insurance.[286] The court further reasoned that substantive and procedural due processes were not violated as the failure to carry liability insurance was related to a person's fitness to drive.[287] Affirming the lower court's decision, the supreme court held that suspending a driver's license for failure to carry liability insurance in a single-vehicle accident was not a violation of equal protection, substantive due process or procedural due process.[288]

CONTRACT LAW

Top

Brooks v. Hollaar

In *Brooks v. Hollaar*,[289] the supreme court held that the named payee on a promissory note has an economic interest in repayment and thus has standing to sue to collect on the loan regardless of the loan's proceeds origination.[290] Between 2005 and 2006, Hollaar loaned $266,430 to Brooks and his wife in a series of four promissory notes.[291] Initially, the money for the loans belonged to Hollaar's father, mother and sister.[292] They transferred the funds into Hollaar's bank account and he then transferred the funds to Brooks.[293] Brooks failed to repay the loans within the notes' allotted time frames and Hollaar filed suit in 2009 in order to recover his losses.[294] The lower court entered judgment in Hollaar's favor on all four promissory notes.[295] On appeal, Brooks argued that because the money for the loans did not originate from Hollaar's bank account, he had no economic interest in the performance of the notes and could only sue for nominal damages, not full contract damages.[296] The supreme court affirmed the lower court's decision, reasoning that Hollaar's economic interest arose from his status as named payee on the promissory notes.[297] The court further reasoned that Brooks' contention was irrelevant because Hollaar was the funds transferor for all four notes as well.[298] Affirming the lower court's decision, the supreme court held that the named payee on a promissory note has an economic interest in repayment and thus has standing to sue to collect on the loan.[299]

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[284] *Id*.
[285] *Id*. at 1278.
[286] *Id*. at 1277.
[287] *Id*. at 1280.
[288] *Id*. at 1283.
[289] 297 P.3d 125 (Alaska 2013).
[290] *Id.* at 128.
[291] *Id.* at 127.
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *Id.*
[296] *Id.* at 128.
[297] *Id.*
[298] *Id.*
[299] *Id.*

Calais Company, Inc. v. Ivy

In *Calais Company, Inc. v. Ivy*,[300] the supreme court held that appraisers must comply with appraisal provisions in a settlement agreements.[301] Calais Company (the "Company") and shareholder Ivy reached a settlement agreement in which the Company would buy Ivy's shares at a value to be determined by a panel of three appraisers.[302] The three appraisers differed in their valuations, two ignoring liabilities and just calculating the fair market value of the Company.[303] On appeal, the Company argued that the two aforementioned appraisers' valuations did not comply with the settlement agreement.[304] The supreme court reversed the lower court's decision, reasoning that the settlement agreement contained plain language that the Company's value was to be determined in accordance with Alaska Statute 10.06.630(a).[305] Thus, according to the court, the two appraisers' valuations did not comply with the settlement agreement because liquidation costs should have been considered when determining this value.[306] Reversing the lower court's decision, the supreme court held that appraisers must comply with appraisal provisions in a settlement agreements.[307]

Charles v. Stout

In *Charles v. Stout*,[308] the supreme court held that a passenger is not an intended third party beneficiary of an insurance policy provided by a lender to protect the property that secures their loan.[309] Charles was injured in a car accident where he was the passenger in Stout's car.[310] In addition to suing Stout, Charles also sued Credit Union 1, the lender and lienholder for the vehicle.[311] The loan agreement between Credit Union 1 and Stout provided that Stout would maintain liability insurance but Credit Union 1 would have the right to obtain insurance if Stout failed to do so.[312] The agreement further stated that any insurance procured by Credit Union 1 would be primarily to protect Credit Union 1 rather than Stout.[313] On appeal, Stout argued that he was an intended third party beneficiary of the insurance policy that Credit Union 1 contracted to provide and he is therefore entitled to recover under that policy.[314] The supreme court affirmed the lower court's decision, reasoning that there was no written agreement compelling Credit Union 1 to provide liability coverage for the benefit of Stout.[315] The court further reasoned that

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[300] 303 P.3d 410 (Alaska 2013).
[301] *Id.* at 420.
[302] *Id.* at 411.
[303] *Id.* at 412–13, 418.
[304] *Id.* at 417.
[305] *Id.* at 418.
[306] *Id.*
[307] *Id.* at 420.
[308] 308 P.3d 1138 (Alaska 2013).
[309] *Id*.
[310] *Id.* at 1139.
[311] *Id.*
[312] *Id.* at 1141.
[313] *Id.*
[314] *Id.* at 1141.
[315] *Id*.

there was no evidence Charles was an intended third party beneficiary of the aforementioned coverage.[316] Affirming the lower court's decision, the supreme court held that a passenger is not an intended third party beneficiary of an insurance policy provided by a lender to protect the property that secures their loan.[317]

Fernandez v. Fernandez

In *Fernandez v. Fernandez*,[318] the supreme court held that, if so provided by the terms of a settlement agreement, parties can return to "square one" after being unable to, in good faith, fulfills the antecedent terms of the agreement.[319] After David and Cynthia separated, they reached a settlement where Cynthia would pay David $33,000 through a second mortgage on her home.[320] However, if Cynthia could not obtain the mortgage, the parties would negotiate an alternative payment plan in good faith; if no agreement resulted, they would return to "square one" and figure things out from that point.[321] When this point was reached, the lower court imposed settlement terms upon Cynthia instead of allowing her to return to "square one."[322] On appeal, she argued the lower court had no authority to do that because the parties merely agreed to negotiate, not agree.[323] The supreme court reversed the lower court's decision, reasoning that in an agreement to negotiate, parties retained the right to refuse proposed terms.[324] In their settlement, Cynthia and David had not established a specific negotiation process, method of settling disputes or agreed a court could dictate settlement terms.[325] Reversing the lower court's decision, the supreme court held that under the parties' settlement agreement, a party could return to "square one" after being unable to, in good faith, fulfill the antecedent terms of the agreement.[326]

Hussein-Scott v. Scott

In *Hussein-Scott v. Scott*,[327] the supreme court held that the more important or principal clause controls in determining the meaning of an ambiguous divorce settlement agreement.[328] Jerry Scott and Camilla Hussein-Scott dissolved their marriage and the court adopted by reference a form settlement completed by Jerry and reviewed by Camilla.[329] On the line supposedly designating the end date for spousal support payments, Jerry indicated that payment would end on December 2, 2020, which was the eighteenth birthday of the couple's youngest daughter.[330]

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[316] *Id*. at 1142.
[317] *Id.*
[318] 312 P.3d 1098 (Alaska 2013).
[319] *Id.* at 1104.
[320] *Id.* at 1099–1100.
[321] *Id.*
[322] *Id.*
[323] *Id.*
[324] *Id.* at 1104.
[325] *Id.*
[326] *Id.* at 1105.
[327] 298 P.3d 179 (Alaska 2013).
[328] *Id*. at 180.
[329] *Id*.
[330] *Id.* at 181.

On a subsequent line designated for other specifics, Jerry indicated that payment would end on the couple's middle daughter's birthday, which was August 1, 2015.[331] The lower court reasoned that words should prevail over numbers and held that Jerry's obligation to pay spousal support ended on the eighteenth birthday of the middle daughter.[332] On appeal, Jerry argued that the lower court's factual finding that he was less likely to make an error in writing a child's name than in writing the date of a child's birthday should be given deference.[333] The supreme court reversed the lower court's decision, reasoning that the determination of the lower court was not factual and that the principle that words control over numbers did not apply here because it only applies to contracts that resemble commercial agreements.[334] The court further reasoned that the written date was both more important because of its location on the form and because it appeared first on the form.[335] Reversing the lower court's decision, the supreme court held that the more important or principal clause controls in determining the meaning of an ambiguous divorce settlement agreement.[336]

Madonna v. Tamarack Air, Ltd.

In *Madonna v. Tamarack Air, Ltd.*,[337] the supreme court held that an airplane maintenance company does not have a contractual duty to repair a plane that was damaged on its airfield after completion of a routine maintenance inspection.[338] Madonna brought his airplane to Tamarack Air, Ltd. ("Tamarack") for a routine inspection, after which Tamarack damaged the plane while it sat on the company's airfield.[339] Offering to repair the plane, Tamarack estimated the costs with Madonna, who rejected their offer in favor of personally arranging the repairs.[340] On appeal, Madonna challenged the lower court's entry of summary judgment dismissing his claim that Tamarack had a contractual obligation to repair the damage it caused.[341] The supreme court affirmed the lower court's decision, reasoning that since Madonna had brought his plane to Tamarack for maintenance, it only had a contractual duty to fix problems arising during the inspection.[342] The inspection had been completed before the damaged occurred, so no such obligation to repair that damage existed.[343] Furthermore, having rejected Tamarack's repair offer, Madonna could not reasonably argue it had breached a duty to repair, unless he also conceded that Tamarack had to continually submit repair plans until he was satisfied, which would be an unenforceable contractual duty because of its indefinite and uncertain terms.[344] Affirming the lower court's decision, the supreme court held that an airplane maintenance company does not

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[331] *Id.*
[332] *Id.*
[333] *Id.* at 184.
[334] *Id.*
[335] *Id.*
[336] *Id.* at 180.
[337] 298 P.3d 875 (Alaska 2013).
[338] *Id.* at 879.
[339] *Id.* at 877.
[340] *Id.*
[341] *Id.* at 879.
[342] *Id.*
[343] *Id.*
[344] *Id.* at 879–80.

have a contractual duty to repair an airplane that was damaged on its airfield after completion of a routine maintenance inspection.[345]

Nautilus Marine Enters. v. Exxon Mobil Corp.

In *Nautilus Marine Enters. v. Exxon Mobil Corp.*,[346] the supreme court held that extrinsic evidence is admissible for interpreting the meaning of the words of a contract even when the language is not ambiguous.[347] In 2006, Nautilus Marine and Exxon Mobil entered into a Settlement Agreement originating from a prior lawsuit.[348] The parties, however, could not agree whether the prejudgment interest should be a simple or compound rate.[349] Nautilus' attorney subsequently suggested the parties settle the principal damages and allow the court to determine the proper prejudgment interest.[350] The settlement agreement ultimately included language to the effect that interest would be "compounded annually."[351] Nevertheless, both parties agreed that there was no discussion about the meaning of "compounded annually."[352] On appeal, Nautilus argued that the parol evidence rule barred the court from considering extrinsic evidence for determining the meaning of the Settlement Agreement unless the language of the contract was ambiguous.[353] The supreme court affirmed the lower court's decision, reasoning that the parol evidence rule only prohibited the enforcement of prior inconsistent agreements and that extrinsic evidence could be considered even when the language of the contract was not ambiguous.[354] The court further reasoned that allowing for extrinsic evidence would allow the courts to better interpret the contract and, thus, better meet the reasonable expectations of the parties at the time the contract was formed.[355] Affirming the lower court's decision, the supreme court held that extrinsic evidence is admissible for interpreting the meaning of the words of a contract even when the language is not ambiguous.[356]

North Pacific Directors, Inc. v. Dep't of Administration

In *North Pacific Directors, Inc. v. Dep't of Administration*,[357] the supreme court held that a contractor is not entitled to additional compensation due to differing site conditions when the differing site conditions could have been noticed during contractor inspections.[358] The Alaska Department of Administration ("Department") and North Pacific contracted for a renovation, including asbestos removal, of the Juneau State Office Building.[359] North Pacific's contract

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[345] *Id.* at 879.
[346] 305 P.3d 309 (Alaska 2013).
[347] *Id.* at 316.
[348] *Id.* at 312.
[349] *Id.*
[350] *Id.*
[351] *Id.* at 313.
[352] *Id.*
[353] *Id.* at 315–16.
[354] *Id.* at 316.
[355] *Id.* at 317.
[356] *Id.* at 316.
[357] 2013 WL 4768380 (Alaska Sept. 6, 2013).
[358] *Id.* at *10.
[359] *Id.* at *1.

acknowledged that they were responsible for visiting and carefully examining the site.[360] Nevertheless, North Pacific did not visit the site before they began the contract's work.[361] Later, it requested additional compensation for the asbestos removal, claiming the site's conditions differed from what was outlined in the contract, which caused the company to incur additional costs in fulfilling its obligations.[362] The Department denied the differing site conditions claim.[363] North Pacific subsequently filed a claim against the Department, asserting that the Department had a duty to disclose superior knowledge of the site's conditions.[364] The supreme court affirmed the lower court's decision, stating that no such duty existed.[365] Therefore, according to the court, North Pacific's claim must fail due to their failure to investigate the site.[366] Affirming the lower court's decision, the supreme court held that a contractor is not entitled to additional compensation due to differing site conditions when the differing site conditions could have been noticed during contractor inspections.[367]

Weilbacher v. Ring

In *Weilbacher v. Ring*,[368] the supreme court held that contracts to transfer privilege are not unenforceable simply because a third party must approve the transfer before the transferee can enjoy the privilege's benefits.[369] Weilbacher brought action against Ring, a purchaser of one of his lots, seeking rescission of the sale based on a mutual mistake concerning which boat-tie ups were associated with each of his lots.[370] As the right to some of the tie-ups in question had been subsequently re-sold to Berube, a third party whom Weilbacher had failed to join as a defendant, the court ordered Weilbacher to join Berube as an indispensable party.[371] Weilbacher declined.[372] Asserting that Berube was necessary to provide relief to the parties, the lower court dismissed Weilbacher's claim.[373] On appeal, Weilbacher argued that because the failure to gain approval by the homeowner's association had rendered the sales contract between him and Ring meaningless, Berube was not an indispensable party because Weilbacher had no claim against him.[374] The supreme court affirmed the lower court's decision, reasoning that many types of privilege are subject to approval by third parties prior to sale.[375] Nevertheless, according to the court, the initial sales contract here memorializing the privilege transfers were no less enforceable just because public agency approval was required before the parties could receive the full benefits of

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[360] *Id.*
[361] *Id.*
[362] *Id.*
[363] *Id.*
[364] *Id.* at *5
[365] *Id.*
[366] *Id.*
[367] *Id.* at *10.
[368] 296 P.3d 32 (Alaska 2013).
[369] *Id.* at 38.
[370] *Id.* at 34–35.
[371] *Id.* at 35.
[372] *Id.*
[373] *Id.* at 36.
[374] *Id.* at 38.
[375] *Id.*

their contractual obligations.[376] Affirming the lower court's decision, the supreme court held that contracts to transfer privilege are not unenforceable simply because a third party must approve the transfer.[377]

CRIMINAL LAW

Top

Bottcher v. State

In *Bottcher v. State*,[378] the supreme court held a person does not need to be a chronic offender for a lifetime revocation of their driver's license to be proper.[379] While intoxicated, Bottcher drove his vehicle off of the road, killing a thirteen year-old boy and just nearly missing his nine year-old brother.[380] Bottcher was stopped by a witness to the accident but refused to return to the scene, deciding to drive in the opposite direction instead.[381] Following his subsequent arrest, it was determined that Bottcher had a blood-alcohol content of 0.237 at the time.[382] Among other punishments, the lower court ultimately revoked Bottcher's driver's license for life.[383] On appeal, Bottcher argued that this lifetime revocation was excessive.[384] The supreme court affirmed the lower court's decision, reasoning that it was the court's duty to determine whether the case at hand represented an extreme one where lifetime revocation was necessary to protect the public.[385] Here, according to the court, the lower court was not clearly mistaken in determining that Bottcher's driver's license must be revoked for life to protect the public considering his current offense in conjunction with his long history of alcohol abuse.[386] Affirming the lower court's decision, the supreme court held a person does not need to be a chronic offender for a lifetime revocation of their driver's license to be proper.[387]

Diorec v. State

In *Diorec v. State*,[388] the court of appeals held that a probation condition must give constitutionally adequate notice of what is prohibited.[389] Diorec was charged with and plead no contest to unlawful sexual exploitation of a minor for possessing tapes of his stepdaughter in various stages of undress.[390] The lower court imposed several probation conditions on Diorec,

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[376] *Id.*
[377] *Id.*
[378] 300 P.3d 528 (Alaska 2013).
[379] *Id.* at 533.
[380] *Id.* at 529.
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] *Id.*
[385] *Id.* at 533.
[386] *Id.* at 534–35.
[387] *Id.* at 533.
[388] 295 P.3d 409 (Alaska Ct. App. 2013).
[389] *Id.* at 412.
[390] *Id.*

including a prohibition on possessing sexually explicit material.[391] On appeal, Diorec argued that prohibiting sexually explicit material possession was overbroad and unconstitutionally vague because it might restrict possession of sexually explicit adult material.[392] The court of appeals remanded the lower court's decision, reasoning that Diorec's probation condition failed to give Diorec adequate notice of what was actually prohibited.[393] Thus, according to the court, since "sexually explicit material" was defined to include "pornography," a term that had been held to be unconstitutionally vague, the probation condition was unconstitutionally vague as well.[394] Remanding the lower court's decision, the court of appeals held that a probation condition must give constitutionally adequate notice of what is prohibited.[395]

Flood v. State

In *Flood v. State*,[396] the court of appeals held that a defendant does not have a constitutional right to waive his presence at trial.[397] At trial, the judge denied Flood's request to be absent at his trial.[398] On appeal, Flood argued the trial judge abused his discretion in denying this request.[399] Flood reasoned that because a defendant has a constitutional right to be present at his trial, he must also have a right to waive this constitutional right.[400] The court of appeals affirmed the lower court's decision, reasoning that a constitutional right is a positive grant insofar as it does not inherently provide a defendant with the opposite of that right.[401] Thus, having the right to be present at trial did not give Flood a constitutional right to waive his presence at trial.[402] Affirming the lower court's decision, the court of appeals held that there was no abuse of discretion since a defendant does not have a constitutional right to waive his presence at trial.[403]

George v. State

In *George v. State*,[404] the court of appeals held that probationers are not awarded good time credit to for spending time at a halfway house under a condition of probation.[405] George and Price were sentenced to various periods of probation as part of their convictions.[406] On probation, both George and Price spent time at Glacier Manor, a halfway house.[407] Subsequently, both violated their probations multiple times, had their probations revoked by the lower court and

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[391] *Id.* at 416.
[392] *Id.*
[393] *Id.* at 417.
[394] *Id.*
[395] *Id.* at 412.
[396] 304 P.3d 1083 (Alaska Ct. App. 2013).
[397] *Id.* at 1086.
[398] *Id.* at 1085.
[399] *Id.* at 1083.
[400] *Id.* at 1085–86.
[401] *Id.* at 1086.
[402] *Id.*
[403] *Id.* at 1085.
[404] 307 P.3d 4 (Alaska Ct. App. 2013).
[405] *Id.* at 6.
[406] *Id.*
[407] *Id.*

were ordered to serve the remainder of their sentences in jail.[408] On appeal, George and Price argued that they should receive good time credit for their time spent at Glacier Manor.[409] The court of appeals affirmed the lower court's decision, reasoning that the governing statute, by its very terms, only applied to prisoners spending time at a correctional facility.[410] In addition, the court found that, as a matter of policy, that prisoners and probationers have different incentives for good behavior and that the application of good time credit is the prisoner's, not probationer's, incentive for good behavior.[411] Affirming the lower court's decision, the court of appeals held that probationers are not awarded good time credit to for spending time at a halfway house under a condition of probation.[412]

Jarnig v. State

In *Jarnig v. State*,[413] the court of appeals held that a warrantless search of a closed container is invalid unless the container is both "immediately associated with the arrest and within the person's immediate control at the time of arrest."[414] In, 2006 the Anchorage police arrested Jarnig, the driver of a car they believed to have been stolen.[415] While Jarnig was in a patrol car following his arrest, an officer searched the alleged stolen car and found a black nylon bag wedged under the passenger's seat that contained drugs and drug paraphernalia.[416] Subsequently, Jarnig was charged with third-degree misconduct involving a controlled substance.[417] The lower court convicted Jarnig, holding that the police had the authority to search any container that was within the driver's reach at the time of the arrest.[418] On appeal, Jarnig argued that the search of the bag was illegal.[419] The court of appeals remanded the case back to the lower court, reasoning that the search was invalid because a warrantless search of a closed container will only be upheld as a search incident to arrest if the container was both within the person's immediate control at the time of arrest and immediately associated with that person.[420] Thus, the lower court's analysis was incomplete.[421] Remanding the case back to the lower court, the court of appeals held that a warrantless search of a closed container is invalid unless the container is both "immediately associated with the arrest and within the person's immediate control at the time of arrest."[422]

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[408] *Id.*
[409] *Id.*
[410] *Id.* at 7.
[411] *Id.*
[412] *Id.*
[413] 309 P.3d 1270 (Alaska Ct. App. 2013).
[414] *Id.* at 1275.
[415] *Id.* at 1272.
[416] *Id.*
[417] *Id.*
[418] *Id.* at 1275.
[419] *Id.* at 1272.
[420] *Id.* at 1275.
[421] *Id.*
[422] *Id.*

Joseph v. State

In Joseph v. State,[423] the court of appeals held that mitigating factor (d)(9) under the state's presumptive sentencing regime is applicable to sentencing for perjury.[424] Following a trial for a speeding ticket, the defendant was charged with perjury.[425] A presumptive sentencing range applied to the defendant because she was a second felony offender.[426] At trial, the defendant proposed mitigating factor (d)(9) among others.[427] Mitigating factor (d)(9) requires sentencing mitigation where the conduct in question is among the least serious within the defined offense.[428] The lower court reasoned that (d)(9) was inapplicable to sentencing for perjury because its classification as a class B felony indicated the legislature's decision that perjury was a serious offense.[429] On appeal, the defendant argued that the ruling on (d)(9) was made in error.[430] The court of appeals reversed the lower court's decision, reasoning while the designation as a class B felony was evidence of the legislature's decision that perjury was a serious offense, accepting the lower court' reasoning would result in every class B felony falling outside the scope of (d)(9).[431] However, according to the court, factor (d)(9)'s function remained consistent across all offenses, serious or not.[432] Reversing the lower court's decision, the court of appeals held that mitigating factor (d)(9) under the state's presumptive sentencing regime is applicable to sentencing for perjury.[433]

Knipe v. State

In *Knipe v. State*,[434] the court of appeals held that, when the totality of the circumstances is properly weighed, it is not inappropriate to not refer sentencing to a statewide three-judge panel.[435] Knipe pled guilty to sexual abuse of a minor in the first degree but requested that the issue of sentencing be referred to a statewide three-judge panel because he believed the presumptive sentence would be manifestly unjust as applied to him.[436] The lower court denied this request.[437] On appeal, Knipe argued that denial of his request for referral to the statewide three-judge panel was manifestly unjust because of his low cognitive abilities and his childhood history of sexual abuse and neglect.[438] The court of appeals affirmed the lower court's decision, reasoning that the superior court appropriately focused their denial of Knipe's request on the totality of the circumstances, including the severity of the injury to the victim and Knipe's failure

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[423] 315 P.3d 678 (Alaska Ct. App. 2013).
[424] *Id.* at 686.
[425] *Id.* at 681.
[426] *Id.* at 683.
[427] *Id.*
[428] *Id.*
[429] *Id.* at 685.
[430] *Id.* at 683.
[431] *Id.* at 685.
[432] *Id.* at 686.
[433] *Id.*
[434] 305 P.3d 359 (Alaska 2013).
[435] *Id*. at 363.
[436] *Id*. at 360.
[437] *Id*.
[438] *Id*. at 363.

to provide an assessment of his rehabilitation potential or recidivism risk.[439] The court further reasoned that although Knipe's cognitive ability and history of abuse presented legitimate factors, the lower court's decision not to refer sentencing to the statewide three-judge panel was not clearly mistaken.[440] Affirming the lower court's decision, the court of appeals held that, when the totality of the circumstances is properly weighed, it is not inappropriate to not refer sentencing to a statewide three-judge panel.[441]

Lewis v. State

In *Lewis v. State*,[442] the court of appeals held that walking away from a halfway house in a non-violent and temporary manner could constitute a mitigating factor for the offense of escape in the second degree.[443] In 2010, Lewis was placed in Glenwood Center, a halfway house in Anchorage.[444] Shortly after his arrival, Lewis, drunk at the time, wandered away from the house despite being told that he should not leave.[445] Within twenty-four hours, Lewis called the police and turned himself in, claiming that his leaving was a big misunderstanding.[446] Nevertheless, at his sentencing, the lower court refused to mitigate his sentence even though his escape was both temporary and nonviolent.[447] On appeal, Lewis argued that the lower court erred in refusing to mitigate his sentence.[448] The court of appeals reversed the lower court's decision, finding the nature of his escape both nonviolent and temporary enough to warrant a mitigation of his sentence.[449] The court reasoned that such mitigation was proper because Lewis' escape "was among the least serious included in the offense" for which he was convicted.[450] Reversing the lower court's decision, the court of appeals held that walking away from a halfway house in a non-violent and temporary manner could constitute a mitigating factor for the offense of escape in the second degree.[451]

Luckart v. State

In *Luckart v. State*,[452] the supreme court held that when a defendant's sentencing is referred to a three judge panel because it has been determined that the presumptive sentence would be manifestly unjust, the panel has authority to expand the prisoner's parole eligibility.[453] After determining that sentencing Luckart within the presumptive range would be manifestly unjust,

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[439] *Id.*
[440] *Id.*
[441] *Id.* at 363.
[442] 312 P.3d 856 (Alaska Ct. App. 2013).
[443] *Id.* at 859–60.
[444] *Id.* at 857.
[445] *Id.* at 858.
[446] *Id.*
[447] *Id.* at 859.
[448] *Id.*
[449] *Id.* at 859–60.
[450] I*d*. at 860.
[451] *Id.* at 859–60.
[452] 314 P.3d 1226 (Alaska 2013).
[453] *Id.* at 1238.

the lower court referred Luckart's case to a three-judge panel for sentencing.[454] Although it sentenced him below the presumptive range, the panel determined it did not have authority to enhance Luckart's parole eligibility.[455] On appeal, Luckart argued that the panel did have such authority.[456] The supreme court reversed the panel's decision, reasoning that a sentence's presumptive nature alone was not determinative of the panel's authority to enhance parole eligibility.[457] The court further stated that when the panel is referred a case governed by presumptive sentencing guidelines, the panel has the authority to enhance parole eligibility unless limited by a specific statutory provision.[458] Reversing the panel's decision, the supreme court held that the three judge sentencing panel has authority to grant enhanced parole eligibility to defendants subject to presumptive sentences.[459]

Martin v. State

In *Martin v. State*,[460] the court of appeals held that police may obtain evidence upon which to base a search warrant by walking up to a residence and peering inside through a small break in a closed set of blinds.[461] After tailing a group of individuals who had just purchased some materials often used in the production of methamphetamine, a police officer approached the apartment the group had just entered by way of a shared deck.[462] Upon reaching the window, the officer observed a small crack in the closed blinds and looked into the residence where he saw items used for making methamphetamine.[463] The officer obtained a search warrant by telephone and then proceeded to arrest Martin and search the apartment.[464] On appeal, Martin argued that the officer's search was unconstitutionally unreasonable.[465] The court of appeals affirmed the lower court's decision, reasoning that although the closed blinds likely indicated both a desire for as well as a reasonable subjective belief of privacy, the weight of authority permitted the government to peer through such a hole.[466] Thus, because the officer was able to peer through the hole with physical ease from a public vantage point, and was not conducting a mere fishing expedition, his search was lawful and not unreasonable.[467] Affirming the lower court's decision, the court of appeals held that police may obtain evidence upon which to base a search warrant by walking up to a residence and peering inside through a small break in a closed set of blinds.[468]

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[454] *Id.* at 1228.
[455] *Id.* at 1229.
[456] *Id.*
[457] *Id.* at 1238, 1230.
[458] *Id.* at 1230–31.
[459] *Id.* at 1238, 1231.
[460] 297 P.3d 896 (Alaska Ct. App. 2013).
[461] *Id.* at 897.
[462] *Id.* at 898.
[463] *Id.* at 897–98.
[464] *Id.* at 898.
[465] I*d.*
[466] *Id.* at 899–900.
[467] *Id.* at 900.
[468] *Id.* at 897.

Rofkar v. State

In *Rofkar v. State*,[469] the court of appeals held that a charge for possessing or manufacturing marijuana should be merged with a conviction for maintaining a building for keeping their controlled substances under Alaska's Double Jeopardy Clause.[470] In the lower court, Rofkar was convicted of three counts relating to the possession and manufacturing of marijuana and a fourth count relating to the maintenance of a building for keeping or distributing controlled substances.[471] The lower court merged the first three charges into a single conviction but refused to merge the fourth charge with the other three.[472] On appeal, Rofkar argued that Alaska's Double Jeopardy Clause requires the fourth charge be merged with the other three.[473] The court of appeals reversed the lower court's decision, reasoning that the statute criminalizing the maintaining of a building for keeping controlled substances was aimed at persons who facilitate someone else's drug offenses rather than at the person committing the drug offenses.[474] Thus, if a person both commits the underlying drug offenses in addition to maintaining a building for keeping their controlled substances, the charges must be merged.[475] Reversing the lower court's decision, the court of appeals held that a charge for possessing or manufacturing marijuana must be merged with a conviction for maintaining a building for keeping their controlled substances under Alaska's Double Jeopardy Clause.[476]

State v. Korkow

In *State v. Korkow*,[477] the supreme court held that there is no legal presumption against a parole restriction beyond the statutory minimum.[478] Korkow was convicted of first-degree murder after stabbing his wife to death in front of his two young children.[479] The sentencing judge, after considering the severity of the case and Korkow's lack of remorse, restricted Korkow's eligibility for discretionary parole beyond the 33-year statutory minimum to 50 years, noting the need to protect Korkow's children and the public at large.[480] On appeal, Korkow argued that parole restriction was outside of the permissible range compared with other cases.[481] The supreme court affirmed the lower court's decision, reasoning that although sentencing courts may take into consideration the Parole Board's expertise in assessing an individual's likelihood for a successful parole, sentencing courts are expressly permitted to restrict eligibility for discretionary parole beyond the minimum.[482] Here, the restriction was proper because the lower court had adequately considered all enumerated criteria, including the severity of the crime,

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[469] 305 P.3d 356 (Alaska Ct. App. 2013).
[470] *Id.* at 359.
[471] *Id.* at 356.
[472] *Id.*
[473] *Id.*
[474] *Id.* at 358.
[475] *Id.*
[476] *Id.* at 359.
[477] 314 P.3d 560 (2013).
[478] *Id.* at 565.
[479] *Id.* at 561.
[480] *Id.*
[481] *Id.* at 561, 565.
[482] *Id.* at 564–65.

Korkow's lack of remorse and the need to protect the public.[483] Affirming the lower court's decision, the supreme court held that there is no legal presumption against a parole restriction beyond the statutory minimum.[484]

State v. Silvera

In *State v. Silvera*,[485] the court of appeals held that federal law does not preempt a three-judge sentencing panel's authority to impose a sentence lower than the presumptive range after considering the "harsh collateral consequences" of deportation.[486] After reviewing Silvera's case, a three-judge sentencing panel considered the non-statutory mitigating factor of deportation's "harsh collateral consequences" on a criminal defendant and imposed a sentence under the presumptive range since deportation would subject Silvera to those "harsh collateral consequences."[487] On appeal, the State argued that federal law prohibited a panel from modifying Silvera's sentence to affect immigration consequences.[488] The court of appeals affirmed the lower court's decision, reasoning that Congress only prohibited state courts from deciding whether a criminal defendant should be deported.[489] Congress, according to the court, did not expressly forbid state courts from adjusting a defendant's sentence to lessen the risk of deportation.[490] Affirming the lower court's decision, the court of appeals held that federal law does not preempt a three-judge sentencing panel's authority to consider the "harsh collateral consequences" of deportation and impose a sentence lower than the presumptive range.[491]

Stepovich v. State

In *Stepovich v. State*,[492] the supreme court held that merely attempting to hide evidence is not sufficient to support a conviction for attempted evidence tampering.[493] Stepovich and another man were standing in an alley behind a bar with their hands cupped leaning towards each other.[494] Both men were looking down into their hands when the arresting officer spotted them.[495] As the officer approached the men, Stepovich backed away behind a dumpster.[496] He reappeared empty handed.[497] Subsequently, the officer found a small envelope of cocaine lying behind the dumpster.[498] Stepovich was accordingly found guilty of attempted evidence tampering.[499] On appeal, Stepovich argued that his conduct was not sufficient to support a

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[483] *Id.* at 566.
[484] *Id.* at 565.
[485] 309 P.3d 1277 (Alaska Ct. App. 2013).
[486] *Id.* at 1280.
[487] *Id.* at 1280–81.
[488] *Id.* at 1280.
[489] *Id.* at 1283.
[490] *Id.*
[491] *Id.* at 1280.
[492] 299 P.3d 734 (Alaska 2013).
[493] *Id.* at 742.
[494] *Id.* at 735.
[495] *Id.*
[496] *Id.*
[497] *Id.*
[498] *Id.* at 736.
[499] *Id.* at 735.

conviction for attempted evidence tampering.[500] The supreme court reversed the lower court's decision, reasoning that if a broad reading of suppressing and concealing were accepted it would unduly raise many misdemeanor cases when evidence was dropped or thrown into felony evidence tampering convictions.[501] Therefore, according to the court, the test here was whether the defendant's actions made it impossible or substantially more difficult for the evidence to be recovered.[502] Reversing the lower court's decision, the supreme court held that merely attempting to hide evidence is not sufficient to support a conviction attempted evidence tampering.[503]

Welsh v. State

In *Welsh v. State*,[504] the court of appeals held that restitution in criminal cases is limited to the amount of actual damages that result rather than the amount of the defendant's unjust gain.[505] Welsh was convicted of third-degree theft after stealing medication from the clinic where she was employed.[506] The pills she stole were purchased by the clinic for three cents each and sold retail for seventy-six cents each.[507] The lower court required Welsh to pay the seventy-six cents price in restitution based on an unjust enrichment theory.[508] On appeal, Welsh argued that it was improper to award damages on such a theory in the case.[509] The court of appeals reversed the lower court's decision, reasoning that the proper measure of restitution is the amount of actual damages suffered.[510] The court further reasoned, however, this amount does not need to be limited to wholesale prices, as that amount might not be sufficient to wholly cover the actual damages suffered.[511] Reversing the lower court's decision, the court of appeals held that restitution in criminal cases is limited to the actual amount of damages suffered.[512]

Williams v. State

In *Williams v. State*,[513] the court of appeals held that parole, even if subject to restrictive conditions, is not "official detention."[514] Williams, having been convicted of a felony, was ordered to live at a community residential center ("CRC") as a condition of his parole.[515] While being transported from one CRC to another, Williams left the transporting van as well as the surrounding area.[516] Based on these actions, Williams was convicted of escape in the second

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[500] *Id.* at 741.
[501] *Id.*
[502] *Id.* at 742.
[503] *Id.*
[504] 314 P.3d 566 (Alaska Ct. App. 2013).
[505] *Id*. at 568.
[506] *Id.* at 567.
[507] *Id.*
[508] *Id.*
[509] *Id.*
[510] *Id*. at 567–68.
[511] *Id*. at 568.
[512] *Id.*
[513] 301 P.3d 196 (Alaska Ct. App. 2013).
[514] *Id*. at 198.
[515] *Id*. at 196.
[516] *Id*. at 197.

degree, which was defined as removing oneself from official detention resulting from a felony without lawful authority.[517] On appeal, the State argued that "official detention" included parole with restrictive conditions such as the ones here.[518] The court of appeals reversed the lower court's decision, reasoning that the legislative history of the statutory defined "official detention" such that the legislature did not intend the term to include supervision on probation or parole.[519] Accordingly, Williams could not be convicted of escape in the second degree because he was not subject to official detention.[520] Reversing the lower court's decision, the court of appeals held that parole, even if subject to restrictive conditions, is not "official detention."[521]

CRIMINAL PROCEDURE

Top

Angasan v. State

In *Angasan v. State*,[522] the supreme court held that a defendant seeking a new trial based on evidence not presented at trial must normally show that this evidence was not known and could not have been known through diligent inquiry at the time of trial.[523] Angasan filed a motion seeking a new trial, claiming that he had new evidence that would exculpate him from his conviction.[524] The evidence consisted of affidavits from four of his relatives.[525] The lower court denied Angasan's motion, finding that the affidavits were known to either Angasan or his attorney at the time of trial and thus did not qualify as newly discovered evidence.[526] On appeal, Angasan argued that he was entitled to a new trial based on any such evidence not presented at trial, even if it was known to the defendant or could have been known with diligent inquiry.[527] The supreme affirmed the lower court's decision, reasoning that almost every American jurisdiction required the new evidence to be unknown and not knowable through diligent inquiry at the time of trial before granting a new trial.[528] The court further reasoned that such a requirement was necessary to prevent defendants from obtaining a new trial after receiving an adverse result and realizing that a different strategy might have been more effective.[529] Affirming the lower court's decision, the supreme court held that a defendant seeking a new trial based on evidence not presented at trial must normally show that this evidence was not known and could not have been known through diligent inquiry at the time of trial.[530]

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[517] *Id.*
[518] *Id.* at 198.
[519] *Id.*
[520] *Id.* at 199.
[521] *Id.* at 198.
[522] 314 P.3d 1219 (Alaska 2013).
[523] *Id.* at 1221.
[524] *Id.* at 1220.
[525] *Id.*
[526] *Id.*
[527] *Id.*
[528] *Id.* at 1223.
[529] *Id.*
[530] *Id.* at 1224.

Fisher v. State

In *Fisher v. State*,[531] the supreme court held that when a defendant files a habeas petition that could be filed under Criminal Rule 35.1, the court must treat the complaint as an application for post-conviction relief under that rule.[532] Fisher filed a petition for writ of habeas corpus, raising issues that could have been pursued in an application for post-conviction relief under Criminal Rule 35.1.[533] The lower court dismissed his petition, and later denied his motion for reconsideration, holding that courts have the discretion to dismiss such claims and direct the defendant to file a new application for post-conviction relief.[534] On appeal, Fisher argued that Civil Rule 86(m) requires the superior court to convert his petition into an application for post-conviction relief.[535] The supreme court reversed the lower court's decision, reasoning that courts have never been given the discretion to dismiss habeas complaints that could be treated as applications for post-conviction relief.[536] Reversing the lower court's decision, the supreme court held that when a defendant files a habeas petition that could be filed under Criminal Rule 35.1, the court must treat the complaint as an application for post-conviction relief under that rule.[537]

Davison v. State

In *Davison v. State*,[538] the court of appeals held that when a defendant disputes factual allegations in a presentence report, the sentencing court must determine the validity and relevance of those allegations.[539] Davison was initially charged with sexually assaulting his daughter based on penile, oral and digital penetration.[540] On appeal, Davidson argued that statements regarding the alleged oral and digital penetration, charges he was acquitted of, should be stricken from the presentence report.[541] The court of appeals reversed the lower court's decision, reasoning that the importance of presentence reports and the degree to which they can affect a defendant in future necessitated action to determine whether any disputed facts contained in the report are sufficiently verified.[542] Thus, if such facts are found to be untrue, lacking in verification or will not be considered, the court must remove those assertions from the report.[543] Reversing the lower court's decision, the court of appeals held that when a defendant disputes factual allegations in a presentence report, the sentencing court must determine the validity and relevance of those allegations.[544]

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[531] 315 P.3d 686 (Alaska 2013).
[532] *Id.* at 688.
[533] *Id.* at 687.
[534] *Id.* at 687–88.
[535] *Id.* at 687.
[536] *Id.* at 688.
[537] *Id.*
[538] 307 P.3d 1 (Alaska Ct. App. 2013).
[539] *Id.* at 4.
[540] *Id.* at 1.
[541] *Id.* at 2–3.
[542] *Id.* at 3.
[543] *Id.* at 3–4.
[544] *Id.* at 4.

Hertz v. Macomber

In *Hertz v. Macomber*,[545] the supreme court held that the Department of Corrections ("DOC") may impose furlough release conditions regardless of whether those conditions were part of an inmate's original sentence.[546] In 1984, Hertz was convicted of second-degree murder and sentenced to a 40-year term with a 20-year parol eligibility.[547] In 2009, he applied for an early release furlough but was denied because he refused to sign the paper work that required treatment or community service as conditions to his furlough.[548] Hertz subsequently filed a complaint against his parol officers arguing that they lacked authority to impose furlough release conditions because they were not part of his original sentence and, accordingly, violated his due process rights.[549] The supreme court affirmed the lower court's decision, reasoning that such conditions did not prolong Hertz's sentence.[550] Thus, according to the court, the conditions did not implicate a liberty interest and, consequently, did not violate Hertz's due process rights.[551] Affirming the lower court's decision, the supreme court held that the DOC may impose furlough release conditions regardless of whether those conditions were part of an inmate's original sentence.[552]

Hunter v. State

In *Hunter v. State*,[553] the court of appeals held that a detective cannot testify to a defendant's reputation based solely on interviews with and reports by other law enforcement officers.[554] Hunter was convicted for second-degree murder based in part on the testimony of Detective Perrenoud.[555] Perrenoud testified that Hunter had a reputation in the community for aggression and violence.[556] This testimony was based entirely on an investigation involving interviews with law enforcement officers and reviews of documents prepared by law enforcement officers.[557] On appeal, the State argued that the law enforcement officers were members of the community and therefore that Hunter's reputation amongst them was his reputation within the community.[558] The court of appeals reversed the lower court's decision, reasoning that Hunter's testified-to reputation existed only in a particular group of the community and, accordingly, was not necessarily generally held.[559] Reversing the lower court's decision, the court of appeals held that a detective cannot testify to a defendant's reputation based solely on interviews with and reports by other law enforcement officers.[560]

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[545] 297 P.3d 150 (Alaska 2013).
[546] *Id.* at 154–55.
[547] *Id.* at 152.
[548] *Id.*
[549] *Id.* at 151.
[550] *Id.* at 156.
[551] *Id.*
[552] *Id.* at 154–55.
[553] 307 P.3d 8 (Alaska Ct. App. 2013).
[554] *Id.* at 15.
[555] *Id.* at 10.
[556] *Id.* at 11.
[557] *Id.*
[558] *Id.*
[559] *Id.* at 13.
[560] *Id.* at 15.

Hutton v. State

In *Hutton v. State*,[561] the court of appeals held that a defendant's right to a unanimous jury with regards to a special interrogatory is protected when the jury receives a general instruction that each verdict must be unanimous.[562] Hutton was charged with third-degree misconduct involving weapons, which required the jury find that he knowingly possessed a concealable firearm.[563] To avoid prejudice with regards to the other charges against Hutton, this question was presented to the jury as a special interrogatory.[564] Because the interrogatory did not contain the phrase "We, the jury," as the other counts began, Hutton argued on appeal that there was a significant possibility that the jury did not understand its decision needed to be unanimous.[565] The court of appeals affirmed the lower court's decision, reasoning that, because the special interrogatory was presented along with jury instructions stating that each verdict must be unanimous, the jury probably viewed the unanimity requirement as applying to the special interrogatory.[566] Affirming the lower court's decision, the court of appeals held that a defendant's right to a unanimous jury with regards to a special interrogatory is protected when the jury receives a general instruction that each verdict must be unanimous.[567]

Miller v. State

In *Miller v. State*,[568] the court of appeals held that failing to make an express ruling in connection with sentencing is not harmless error where the record does not clearly establish the truth of the allegation at issue.[569] Miller was charged with assault for attacking a woman with whom he had a previous sexual encounter.[570] At trial, the State alleged that the assault charge was a crime of domestic violence, which carried a mandatory sentence of thirty days in prison.[571] Without ever expressly ruling whether Miller's crime was a domestic violence, the lower court issued its written judgment labeling it as such.[572] On appeal, the State argued that the court's error was harmless.[573] The court of appeals reversed the lower court's decision, stating that the court was required to make a factual and legal determination supporting its characterization of the offense on the record.[574] Here, the record did not affirmatively establish that Miller's conduct constituted a crime of domestic violence.[575] Reversing the lower court's decision, the court of appeals held that failing to make an express ruling in connection with sentencing is not harmless error where the record does not clearly establish the truth of the allegation at issue.[576]

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[561] 305 P.3d 364 (Alaska 2013).
[562] *Id.* at 370.
[563] *Id.* at 366.
[564] *Id.*
[565] *Id.* at 370
[566] *Id.*
[567] *Id.*
[568] 312 P.3d 1112 (Alaska Ct. App. 2013).
[569] *Id.* at 1116.
[570] *Id.* at 1114.
[571] *Id.* at 1115.
[572] *Id.*
[573] *Id.* at 1116.
[574] *Id.*
[575] *Id.*
[576] *Id.*

State v. Clifton

In *State v. Clifton*,[577] the court of appeals held that a convicted criminal defendant could be subject to a second and separate trial to assess if the defendant was guilty but mentally ill.[578] Clifton believed she was under covert government surveillance.[579] In 2006, Clifton and her human resources manager had a meeting where Clifton was informed she would have to undergo psychiatric evaluation.[580] In response to this news, Clifton shoved the barrel of a loaded pistol against the manager's ribs and pulled the trigger.[581] While the pistol failed to fire, Clifton was still indicted for attempted murder and third-degree assault.[582] Multiple psychologists determined that Clifton suffered from a delusional disorder, but Clifton's attorney stated that he did not intend to rely on an insanity defense.[583] Clifton was later found guilty on both counts and the State filed a motion asking the lower court to determine if Clifton should be found "guilty but mentally ill."[584] The lower court stated that ruling her as "guilty but mentally ill" after her trial would be an unconstitutional violation of her equal protection rights.[585] On appeal, Clifton argued that the legislature's distinction between defendants who commit crimes and defendants who commit crimes who also suffer from a mental disease was arbitrary.[586] The court of appeals reversed the lower court's decision, stating that it was constitutional for the state to have lawfully enacted the procedures.[587] The court reasoned that the legislature, in drawing the aforementioned distinction, could have found that the latter types of defendants should have their parole restricted because of their inability to appreciate the crimes they committed.[588] Reversing the lower court's decision, the court of appeals held that a convicted criminal defendant could be subject to a second and separate trial to assess if the defendant was guilty but mentally ill.[589]

White v. State

In *White v. State*,[590] the court of appeals held that a trial court may only grant a motion to overturn the jury's verdict and order a new trial when the judge finds the evidence to be so one-sided that the jury's view of the case was plainly unreasonable and unjust.[591] In the trial court, a jury found White guilty of fourth-degree assault.[592] After the verdict, White motioned under Alaska Criminal Rule 33(a) for the judge to overturn the jury's verdict and order a new trial on

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[577] 315 P.3d 694 (Alaska Ct. App. 2013).
[578] *Id.* at 710.
[579] *Id*. at 698.
[580] *Id*.
[581] *Id*.
[582] *Id.*
[583] *Id*.
[584] *Id*. at 699–700.
[585] *Id.* at 700.
[586] Id. at 703–04.
[587] *Id.* at 708.
[588] *Id.* at 704.
[589] *Id.* at 710.
[590] 298 P.3d 884 (Alaska 2013).
[591] *Id.* at 885.
[592] *Id.*

the ground that the verdict was against the weight of the evidence.[593] The judge denied the motion because the jury's verdict should not be overturned if there was any evidentiary basis for the jury's decision.[594] On appeal, White argued that the district court erred by using the "any evidentiary basis" test when deciding his motion for a new trial.[595] The court of appeals reversed the trial court's decision, reasoning that the only legal test appropriate in a trial court for a motion for a new trial is the "plainly unreasonable and unjust" test.[596] The court further reasoned that the "any evidentiary basis" test is the proper standard only when an appellate court reviews a trial court's denial of a request for a new trial.[597] Reversing the trial court's decision, the court of appeals held that a trial court may only grant a motion to overturn the jury's verdict and order a new trial when the judge finds the evidence to be so one-sided that the jury's view of the case was plainly unreasonable and unjust.[598]

EMPLOYMENT LAW

Top

ARCTEC Services v. Cummings

In *ARCTEC Services v. Cummings*,[599] the supreme court held that witness-credibility determinations by the Workers' Compensation Board (the "Board") are made in accordance with a subjective standard.[600] In 2006, Cummings was hurt on the job and began receiving workers' compensation checks that periodically required her to certify that she had not been working.[601] However, while receiving the checks, Cummings occasionally worked without pay in her boyfriend's store.[602] In 2008, ARCTEC filed a petition for a finding of fraud with the Board.[603] Since the Board found Cummings' testimony that she considered her time at the store to be purely voluntary and therefore not necessary to report credible, it denied ARCTEC's petition.[604] ARCTEC subsequently appealed to the Workers' Compensation Appeals Commission (the "Commission"), arguing that the Board should have used an objective standard to evaluate Cummings' testimony that would determine if Cummings' subjectively held belief was objectively reasonable.[605] The Commission agreed that the Board should have used an objective standard.[606] The supreme court reversed the Commission's decision, citing evidence that both the legislative history and the language of the statute itself called for a subjective standard.[607] The

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[593] *Id.*
[594] *Id.*
[595] *Id.* at 886.
[596] *Id.*
[597] *Id.*
[598] *Id.*
[599] 295 P.3d 916 (Alaska 2013).
[600] *Id.* at 923.
[601] *Id.* at 917.
[602] *Id.* at 918.
[603] *Id.* at 919.
[604] *Id.*
[605] *Id.* at 919.
[606] *Id.* at 919–20.
[607] *Id.* at 921–23.

court further reasoned that since the legislature had given the Board "the sole power to determine credibility of a witness," the objective standard would also impermissibly impinge on the Board's authority.[608] Reversing the lower court's decision, the supreme court held that witness-credibility determinations by the Board are made in accordance with a subjective standard.[609]

Beach v. Handforth-Kome

In *Beach v. Handforth-Kome*,[610] the supreme court held once an employer discovers reasonable grounds for dismissal, the employer need not provide additional procedural protections.[611] Beach was fired from her job at a health clinic when the clinic's director discovered that she had falsified prescription drug records.[612] Beach sued, alleging a breach of the implied covenant of good faith since she believed her employer retaliated against her for her suggestions about improving clinic security.[613] On appeal, Beach argued that her termination was not objectively fair.[614] The supreme court affirmed the lower court's decision, reasoning that Handforth-Kome had conducted a methodical review of the records that showed that the records were falsified and that Beach was responsible for the aforementioned falsification.[615] Accordingly, since the methodical review uncovered reasonable grounds for dismissal, according to the court, additional procedural protection was unnecessary.[616] Affirming the lower court's decision, the supreme court held once an employer discovers reasonable grounds for dismissal, the employer need not provide additional procedural protections.[617] Beach was fired from her job at a health clinic when the clinic's director discovered that she had falsified prescription drug records.[618]

Grimmett v. University of Alaska

In *Grimmett v. University of Alaska*,[619] the supreme court held that an employer generally may not avoid a for-cause employee's due process protections at termination through use of a nonretention clause.[620] In 2008, two employees of the University of Alaska lost their employment due to performance concerns.[621] Despite the for-cause language in their employment contracts, both employees were denied termination-for-cause hearings based upon the nonretention clause in their contracts.[622] On appeal, the University of Alaska argued that the nonretention clause allowed the University to terminate non-tenured employees without a

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[608] *Id.* at 923–24.
[609] *Id.* at 923.
[610] 314 P.3d 53 (Alaska 2013).
[611] *Id.* at 57.
[612] *Id.* at 54.
[613] *Id.*
[614] *Id.* at 55.
[615] *Id.* at 57.
[616] *Id.*
[617] *Id.* at 57.
[618] *Id.*
[619] 303 P.3d 482 (Alaska 2013)
[620] *Id.* at 490.
[621] *Id.* at 484–86.
[622] *Id.* at 485, 487.

showing of cause.[623] The supreme court affirmed the lower court's decision, reasoning that using nonretention as a pretext for performance related termination violates an employee's expectation of due process under a for-cause contract.[624] The court further reasoned that under the University's regulations, nonretention was only available when market forces, lack of funds, reorganization or other nonperformance issues called for the discontinuation of employment.[625] Affirming the lower court's decision, the supreme court held that an employer generally may not avoid a for-cause employee's due process protections by use of a nonretention clause in terminating employment.[626]

Johnson v. Aleut Corp.

In *Johnson v. Aleut Corp,* [627] the supreme court held that a broadly worded arbitration agreement can give an arbitrator authority to determine the arbitrability of disputes as well as resolve such disputes based on theories that differ from those submitted by the parties.[628] The employment contract between the Aleut Corporation (the "Corporation") and Johnson stated that Johnson would serve as CEO of the Corporation with an automatic extension subject to both his fulfilling a reminder provision and the Corporation providing him with notice if it chose not to renew his employment.[629] Even though the Corporation never received Johnson's reminder, the two parties nonetheless proceeded to engage in renewal discussions.[630] After Johnson was subsequently terminated without requisite notice, he challenged his termination in arbitration as required by his employment agreement. [631] The arbitrator ultimately determined that because the Corporation was aware of the reminder provision and because it did not terminate Johnson for cause, it breached the contract.[632] The lower court subsequently vacated the decision, holding that the arbitrator acted beyond the scope of his authority in determining that, contrary to both parties' concessions, the reminder was not a condition precedent to the renewal of Johnson's contract.[633] The supreme court reversed the lower court's decision, reasoning that great deference is given to arbitration decisions.[634] Thus, according to the court, the arbitrator's conclusion that the Corporation violated the agreement was reasonable and within the scope of the arbitrator's authority.[635] Reversing the lower court's decision, the supreme court held that a broadly worded arbitration agreement can give an arbitrator authority to determine the arbitrability of disputes as well as resolve such disputes based on theories that differ from those submitted by the parties.[636]

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[623] *Id.* at 486.
[624] *Id.* at 490.
[625] *Id.* at 489.
[626] *Id.* at 490.
[627] 307 P.3d 942 (Alaska 2013).
[628] *Id.* at 952.
[629] *Id.*
[630] *Id.* at 945.
[631] *Id.* at 947.
[632] *Id.*
[633] *Id.*
[634] *Id.* at 948.
[635] *Id.*
[636] *Id.* at 952.

Mills v. Hankla

In *Mills v. Hankla*,[637] the supreme court held that municipalities are immune from negligent hiring claims because hiring is a discretionary action requiring deliberation and judgment.[638] Hankla did not meet the eligibility requirements when he was appointed Hoonah police chief by the Hoonah City Council (the "Council").[639] The Council subsequently amended the city code to make him qualified and rehired him.[640] Four employees then claimed the city negligently hired Hankla because of his alleged discriminatory treatment and sexual harassment.[641] On appeal, the employees challenged the lower court's entry of summary judgment dismissing their negligent hiring claim.[642] The supreme court affirmed the lower court's decision, interpreting Alaska Statute 09.65.070(d)(2) as providing qualified official immunity protecting municipalities from liability for discretionary actions when those actions were done by a public official within his scope of duties.[643] Here, according to the court, the Council's appointment of Hankla was discretionary because it required deliberation and judgment in evaluating and selecting candidates from an applicant pool.[644] Affirming the lower court's decision, the supreme court held that municipalities are immune from negligent hiring claims because hiring is a discretionary action requiring deliberation and judgment.[645]

Morrison v. Nana Worleyparsons, LLC

In *Morrison v. Nana Worleyparsons, LLC*,[646] the supreme court held that short-term performance plans, without express indications to the contrary, do not alter at-will employment contracts.[647] Morrison, an at-will employee at Nana Worleyparsons, was placed onto a Performance Improvement Plan ("PIP") aimed at improving his lackluster work performance and negative attitude.[648] Shortly thereafter, Morrison made an inappropriate comment to a co-worker at a work party and was fired.[649] On appeal, Morrison argued that Nana Worleyparsons both breached his contract and the implied covenant of good faith and fair dealing.[650] The supreme court affirmed the lower court's decision, reasoning that since the PIP did not contain any express indications changing the at-will nature of Morrison's employment, the PIP did not alter his original at-will employment contract.[651] The court further reasoned Nana Worleyparson's actions did not breach the implied covenants of good faith and fair dealing because their actions were both objectively

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[637] 297 P.3d 158 (Alaska 2013).
[638] *Id.* at 173.
[639] *Id.* at 161.
[640] *Id.*
[641] *Id.* at 162.
[642] *Id.* at 173.
[643] *Id.*
[644] *Id.*
[645] *Id.*
[646] 314 P.3d 508 (Alaska 2013).
[647] *Id.* at 510–12.
[648] *Id.* at 509.
[649] *Id.* at 510.
[650] *Id.*
[651] *Id.* at 511–12.

and subjectively appropriate in Morrison's particular circumstance.[652] Affirming the lower court's decision, the supreme court held that short-term performance plans, without express indications to the contrary, do not alter at-will employment contracts.[653]

Municipality of Anchorage v. Adamson

In *Municipality of Anchorage v. Adamson*,[654] the supreme court held that in order to stay future medical benefits, an employer must demonstrate "the existence of the probability" that an appeal of a workers' compensation decision will be decided against the compensation recipient.[655] This case consolidated two lower court cases.[656] In one case, the Municipality of Anchorage appealed an Alaska Workers' Compensation Board (the "Board") decision awarding compensation, arguing that medical benefits should be stayed under the standard of "probability of success on the merits."[657] The Alaska Workers' Compensation Appeals Commission (the "Commission") subsequently refused the stay because the Municipality had not shown that it was more likely than not that the appeal would prevail on the merits.[658] In the other case, the City and Borough of Juneau ("CBJ") similarly appealed a Board decision, asking for a stay of future medical benefits under the standard that it was more likely than not that the merits of the appeal would be decided in CBJ's favor.[659] The Commission applied a substantial question standard and, finding that CBJ raised a "serious and substantial question" about the claim, granted the stay.[660] The supreme court affirmed the "probability of success on the merits" standard, reasoning that the correct standard must balance the hardships likely faced by both the employer and the employee in these types of cases.[661] Thus, according to the court, this high threshold was necessary since medical benefits were ongoing benefits that acted as a salary substitute for injured employees.[662] Reviewing the two consolidated cases, the supreme court held that in order to stay future medical benefits, an employer must demonstrate "the existence of the probability" that an appeal of a workers' compensation decision will be decided against the compensation recipient.[663]

Plumbers & Pipefitters, Local 367 v. Municipality of Anchorage

In *Plumbers & Pipefitters, Local 367 v. Municipality of Anchorage*,[664] the supreme court held that the Anchorage Municipal Code ("AMC") limits the equitable jurisdiction of courts with respect to collective bargaining disputes.[665] The Plumbers & Pipefitters, Local 367 ("Union") and the Municipality of Anchorage ("Anchorage") were engaged in collective bargaining

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[652] *Id.*
[653] *Id.* at 510–12.
[654] 301 P.3d 569 (Alaska 2013).
[655] *Id.* at 571.
[656] *Id.* at 571–72.
[657] *Id.*
[658] *Id.* at 572.
[659] *Id.*
[660] *Id.* at 573.
[661] *Id.* at 578–79.
[662] *Id.* at 578.
[663] *Id.* at 571.
[664] 298 P.3d 195 (Alaska 2013).
[665] *Id.* at 196.

negotiations for over a year.[666] Unable to reach an agreement on all key points, the Union and Anchorage submitted Last Best Offers ("LBO") to an arbitrator as required by the AMC.[667] The arbitrator adopted the Union's LBO, but, subsequently, the Anchorage Assembly failed to approve the decision.[668] The Union voted to strike but in the interest of public health and safety forewent executing that action for the time being.[669] On appeal, the Union argued that the arbitrator's decision should be implemented in return for issuing an injunction against a strike pursuant to the court's equitable jurisdiction.[670] The supreme court affirmed the lower court's decision, reasoning that, even acting in equity, a court cannot disregard statutes that "plain and fully" cover a situation.[671] Thus, according to the court, the court's equitable power to grant relief that must be found within the AMC's comprehensive scheme regulating impasses such as here was absent.[672] Affirming the lower court's decision, the supreme court held that the AMC limits the equitable jurisdiction of courts with respect to collective bargaining disputes.[673]

Pruitt v. Providence Extended Care

In *Pruitt v. Providence Extended Care*,[674] the supreme court held that filing an affidavit for readiness for hearing nearly four years after an employer files a controversion of such claim does not substantially comply with the two-year statute of limitations imposed by the workers' compensation statute.[675] In 2004, Pruitt was injured on the job and began receiving disability benefits.[676] In 2005, after Pruitt filed a workers' compensation claim, Pruitt's employer, Providence Extended Care ("Providence"), filed three separate controversions in an attempt to disclaim any future disability payments.[677] In 2009, Pruitt filed an affidavit for readiness for hearing and a hearing was held by the Workers' Compensation Board ("Board"). Providence argued, and the Board agreed, that Pruitt's claim should be dismissed as she failed to file anything within the two-year statute of limitations period, which began to run in 2005.[678] The Alaska Workers' Compensation Appeals Commission ("Commission") subsequently upheld the Board's decision and Pruitt appealed to the supreme court.[679] The supreme court affirmed the Commission's decision, reasoning that the plain language of the statute, along with the Board's urging in 2006 that Pruitt contact staff at the Board for assistance in filing the necessary documents within the statute of limitations period, made it clear Pruitt did not substantially comply with the statute.[680] Affirming the Commission's decision, the supreme court held that

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[666] *Id.* at 197.
[667] *Id.* at 197–98.
[668] *Id.* at 197.
[669] *Id.*
[670] *Id.* at 196
[671] *Id.* at 201.
[672] *Id.* at 202–03.
[673] *Id.* at 196.
[674] 297 P.3d 891 (Alaska 2013).
[675] *Id.* at 891.
[676] *Id.* at 892.
[677] *Id.*
[678] *Id.* at 893.
[679] *Id.* at 894.
[680] *Id.* at 895.

filing an affidavit for readiness for hearing nearly four years after an employer files a controversion of such claim does not substantially comply with the two-year statute of limitations imposed by the workers' compensation statute.[681]

Rosales v. Icicle Seafoods, Inc.

In *Rosales v. Icicle Seafoods, Inc.*,[682] the supreme court held that the Alaska Workers' Compensation Board ("Board") has authority to approve global settlements of related claims in workers' compensation cases.[683] While working for Icicle Seafoods, Inc. ("Icicle"), Rosales was injured.[684] He filed a report with the Board as well as a maritime lawsuit but later settled all his claims in a global settlement with Icicle, which the Board approved.[685] When the Board subsequently refused to amend the settlement on Rosales' request, he appealed to the supreme court arguing that the Board's approval of the global settlement was invalid because it had no jurisdiction over his maritime claim. [686] The supreme court affirmed the Board's decision, reasoning that even though Rosales could have pursued the two claims separately, the Board was not prohibited from settling both claims.[687] Thus, according to the court, not amending Rosales' global settlement was proper to bar double recovery for the same claim.[688] Affirming the Board's decision, the supreme court held that the Board has authority to approve global settlements of related claims in workers' compensation cases.[689]

FAMILY LAW

Top

Amy M. v. State

In *Amy M. v. State*,[690] the supreme court held that, in deciding whether a parent has been given a reasonable amount of time to remedy her conduct for purposes retaining parental rights, it is appropriate to consider his or her history of substance abuse in conjunction with present conduct.[691] The Office of Children's Services ("OCS") filed a petition for termination of Amy's parental rights three months after her child, Kadin, tested positive for cocaine at birth.[692] Amy had, up to that point, repeatedly failed to complete inpatient treatment programs, despite the requirements of her OCS case plan.[693] However, between this filing and the start of the trial, Amy began taking steps towards a sober future.[694] Nevertheless, the lower court concluded that Amy's substance abuse placed Kadin in need of aid and that she failed to remedy the

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[681] *Id.* at 891.
[682] 316 P.3d 580 (Alaska 2013).
[683] *Id.* at 585.
[684] *Id.* at 582.
[685] *Id.* at 583.
[686] *Id.* at 583–84.
[687] *Id.* at 585.
[688] *Id.*
[689] *Id.*
[690] 320 P.3d 253 (Alaska 2013).
[691] *Id.* at 254.
[692] *Id.* at 255–56.
[693] *Id.* at 256.
[694] *Id.*

corresponding conditions within a reasonable time.[695] On appeal, Amy argued that she was not given a reasonable amount of time to remedy her substance abuse.[696] The supreme court affirmed the lower court's decision, reasoning that to terminate parental rights, a parent must have failed to remedy the conduct or conditions that placed the child in substantial risk within a reasonable time.[697] Here, according to the court, Amy did not take any concrete steps toward obtaining long-term residential treatment, as required by her case plan, and her positive steps towards recovery were only very recent changes.[698] Affirming the lower court's decision, the supreme court held that, in deciding whether a parent has been given a reasonable amount of time to remedy her conduct for purposes of maintaining child custody, it is appropriate to consider his or her present conduct as well as his or her history of substance abuse.[699]

Casey K. v. State, Dep't of Health & Social Services.

In *Casey K. v. State, Dep't of Health & Social Services*,[700] the supreme court held that a delay by the Office of Children's Services ("OCS") in providing collateral information needed for a person's substance abuse evaluation does not in and of itself make OCS's efforts to reunify that person with their child unreasonable.[701] In 2010, OCS began investigating Casey K., the mother of a young girl named Cheyenne, for substance abuse and neglect.[702] OCS established a case plan for Casey, as well as a visitation schedule for Casey and Cheyenne, services for Casey during her subsequent incarceration and funding for Casey's urine analysis and other assessments.[703] Casey, however, took no action to remedy her conduct, avoided contact with OCS, and failed to complete all but two of four urine analyses.[704] In 2011, Casey had an appointment for a substance abuse evaluation, but OCS failed to submit the required collateral information to the assessor.[705] Relying on incomplete information, the assessor concluded that Casey did not require substance abuse treatment and the treatment Casey did in fact require was delayed by approximately one year.[706] On appeal, Casey argued that OCS's efforts to reunite her with Cheyenne were unreasonable because of the delay in providing the collateral information.[707] The supreme court affirmed the lower court's decision, reasoning that a brief lapse in OCS's provision of services did not prevent a finding that OCS made reasonable efforts toward reunification.[708] Affirming the lower court's decision, the supreme court held that a delay by OCS in providing collateral information needed for a person's substance abuse evaluation does not in and of itself make OCS's efforts to reunify that person with their child unreasonable.[709]

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[695] *Id.* at 257.
[696] *Id.* at 258.
[697] *Id.* at 258–59.
[698] *Id.*
[699] *Id.* at 254.
[700] 311 P.3d 637 (Alaska 2013).
[701] *Id.* at 646.
[702] *Id.* at 640.
[703] *Id.* at 646.
[704] *Id.* at 644–45.
[705] *Id.* at 641.
[706] *Id.*
[707] *Id.* at 646.
[708] *Id.*
[709] *Id.*

Childs v. Childs

In *Childs v. Childs*,[710] the supreme court held that the Servicemembers Civil Relief Act (the "Act") does not preclude the consideration of military service pay when modifying child support payments.[711] In 2005, Joshua and Christina Childs dissolved their marriage.[712] Joshua subsequently served in the United States Army.[713] Accordingly, the lower court ordered the modification of his child support obligation to account for his military Basic Allowance for Housing.[714] On appeal, Joshua argued that the Act precluded the lower court from ordering the modification because he was an active service member.[715] The supreme court affirmed the lower court's decision, reasoning that Joshua failed to show that his ability to present a defense was materially affected by his military duty.[716] The supreme court further reasoned that a servicemember was not entitled to a stay against a civil action merely by virtue of serving.[717] Affirming the lower court's decision, the supreme court held that the Act does not preclude the consideration of military service pay when modifying child support payments.[718]

Christopher C. v. State, Dep't of Health & Social Services

In *Christopher C. v. State, Dep't of Health & Social Services*,[719] the supreme court held that termination of parental rights is appropriate when active efforts to remedy the parents' problematic behavior fail.[720] The Office of Children's Services ("OCS") attempted to improve both parents' parenting skills, in addition to providing substance abuse counseling.[721] However, OCS eventually filed a petition to terminate the parents' rights after efforts to improve their parenting skills failed.[722] The lower court granted the petition and terminated their parental rights because they did not remedy their behavior despite OCS's active efforts to avoid a family breakup.[723] On appeal, the parents challenged these findings without providing any evidence beyond their own testimony.[724] The supreme court affirmed the lower court's decision, reasoning that each challenged finding was supported by appropriate evidence.[725] The court further reasoned that while OCS's efforts to keep the family together were imperfect, they qualified as active efforts.[726] Affirming the lower court's decision, the supreme court held that termination of parental rights is appropriate when active efforts to remedy parents' problematic behavior fail.[727]

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[710] 310 P.3d 955 (Alaska 2013).
[711] *Id.* at 959.
[712] *Id.* at 957.
[713] *Id.*
[714] *Id.*
[715] *Id.* at 959.
[716] *Id.*
[717] *Id.* at 959–60.
[718] *Id.* at 959.
[719] 303 P.3d 465 (Alaska 2013).
[720] *Id*. at 467.
[721] *Id*. at 477–79.
[722] *Id*. at 472.
[723] *Id.* at 473.
[724] *Id*.
[725] *Id.* at 475, 479, 480, 482.
[726] *Id.* at 478–79.
[727] *Id*. at 467.

Claudio P. v. State, Dep't of Health & Social Services

In *Claudio P. v. State, Dep't. of Health and Social Services*,[728] the supreme court held that termination of parental rights is warranted when an incarcerated parent's failure to adequately arrange care for a child renders the child a need in care.[729] Claudio P. was incarcerated prior to the birth of his child.[730] While incarcerated, he arranged for the mother to care for the child, but the child was placed into the custody of the Office for Children's Services ("OCS") when the mother's parental rights were terminated.[731] Ultimately, the lower court terminated Claudio's parental rights as well.[732] On appeal, Claudio argued that the lower court erred in its ruling because, even though he was incarcerated, he made reasonable plans for his child to be cared for by his parents if the child's mother was not available.[733] The supreme court affirmed the lower court's decision, reasoning that because it took Claudio over a year to take action to arrange care for his child following her placement in OCS custody, his efforts to plan for his child's care were inadequate.[734] Affirming the lower court's decision, the supreme court held that termination of parental rights is warranted when an incarcerated parent's failure to adequately arrange care for a child renders the child a need in care.[735]

Co v. Matson

In *Co v. Matson*,[736] the supreme court held that in child custody cases the statutory best-interest factors should determine custody rather than deference to an interim custody agreement.[737] As part of a divorce proceeding between the husband, Co, and the wife, Matson, the two entered into an interim custody arrangement regarding their two children.[738] Matson later moved to amend the interim agreement due to the inability of the parents to communicate adequately as well as other concerns about Co's parenting.[739] In resolving the custody dispute, the lower court determined that the children would benefit from sole legal custody residing in one parent and concluded that the majority of the statutory best-interest factors favored granting Matson this custody.[740] On appeal, Co argued that the lower court had improperly weighed the evidence in applying the statutory best-interest factors and abused its discretion by disrupting the status quo of the interim custody agreement.[741] The supreme court affirmed the lower court's decision, reasoning that the court had substantial discretion in weighing the evidence and was not obligated to maintain the status quo of the interim custody agreement.[742] The court further

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[728] 309 P.3d 860 (Alaska 2013).
[729] *Id.* at 865.
[730] *Id.* at 861.
[731] *Id.* at 861–863.
[732] *Id.* at 863.
[733] *Id.* at 864.
[734] *Id.* at 865.
[735] *Id.*
[736] 313 P.3d 521 (Alaska 2013).
[737] *Id*. at 530.
[738] *Id.* at 523.
[739] *Id.* at 523–24.
[740] *Id.* at 524.
[741] *Id.* at 525, 530.
[742] *Id*. at 524, 530–31.

reasoned that such pre-trial interim agreements come second to considerations of the best interests of the children.[743] Affirming the lower court's decision, the supreme court held that in child custody cases it is the statutory best-interest factors that determine custody rather than deference to the status quo of an interim custody agreement.[744]

David S. v. Jared H. & Connie H.

In *David S. v. Jared H. & Connie H.,*[745] the supreme court held that a biological parent's repeated incarceration does not justify failure to communicate meaningfully his or her child.[746] David was not listed on his daughter's birth certificate and had been incarcerated for most of her life.[747] After the biological mother died, the lower court granted the child's maternal grandparents' petition to adopt her without David's consent.[748] On appeal, David argued this was improper because his failure to communicate meaningfully with his daughter was justified by his incarceration.[749] The supreme court affirmed the lower court's decision, reasoning that communication constraints resulting from the parent's own conduct could never justify the parent's failure to communicate.[750] Thus, according to the court, David's repeated incarceration from parole violations was a result of his own conduct and, consequently, made his failure unjustifiable and his consent in the proceeding unnecessary.[751] Affirming the lower court's decision, the supreme court held that a biological parent's repeated incarceration dos not justify failure to communicate meaningfully with his or her child.[752]

Glover v. Ranney

In *Glover v. Ranney,*[753] the supreme court held that in divorce agreements dividing retirement benefits from military pensions, courts can compel award of a survivor benefit allowing receipt of the same amount after the employee spouse's death.[754] Former spouses, Glover and Ranney, disputed whether a survivor benefit plan, from Glover's military pension, should be divided despite not being mentioned in the divorce agreement.[755] On appeal, Glover argued the benefit plan was outside of their agreement's scope.[756] The supreme court affirmed the lower court's decision, reasoning that a settlement equitably dividing retirement benefits implicitly included survivor benefits. [757] However, Ranney, who would receive 28.6% of Glover's retired pay while

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[743] *Id*. at 531.
[744] *Id.* at 530–31.
[745] 308 P.3d 862 (Alaska 2013).
[746] *Id.* at 869.
[747] *Id.* at 864.
[748] *Id.* at 863.
[749] *Id.* at 863–864.
[750] *Id.* at 869.
[751] *Id.* at 869–70.
[752] *Id.* at 869.
[753] 314 P.3d 535 (Alaska 2013).
[754] *Id.* at 540.
[755] *Id.* at 537.
[756] *Id.* at 539.
[757] *Id.* at 544.

he was alive, should not be awarded 55% of it after his death.[758] Affirming the lower court's inclusion of survivor benefits but remanding for proper allocation, the supreme court held that in divorce agreements dividing retirement benefits from military pensions, courts can compel award of a survivor benefit allowing receipt of the same amount after the employee spouse's death.[759]

Harris v. Governale

In *Harris v. Governale*,[760] the supreme court held that a court must give weight to instances of domestic violence that occur outside the presence of the child when analyzing the child's best interest during a custodial determination.[761] Harris planned to move to Florida with her husband and sued Governale for sole custody of their child.[762] After a trial, however, the lower court awarded primary physical custody to Governale.[763] On appeal, Harris argued that it was error for the lower court to disregard an instance of alleged domestic violence between Governale and his current girlfriend only because it had taken place outside the presence of the child.[764] The supreme court reversed the lower court's decision, reasoning that there was no requirement under the statute that a child be present during alleged domestic violence for it to be a factor in a custodial determination.[765] Children, according to the court, do not need to see the domestic violence for it to affect their wellbeing.[766] Reversing the lower court's decision, the supreme court held that a court must give weight to instances of domestic violence that occur outside the presence of the child when analyzing the child's best interest during a custodial determinations.[767]

Hawkins v. Williams

In *Hawkins v. Williams*,[768] the supreme court held that a grandparent seeking court-ordered visitation with a grandchild must prove by clear and convincing evidence that visitation is in the best interests of the child, even when the parents do not explicitly object to all types of visitation.[769] In 2011, Hawkins fell out of contact with her daughter, Williams.[770] Hawkins later filed a petition for grandparent visitation with Williams' four children.[771] At trial, Williams did not testify, but Williams' husband, who had no general objections to visitation, was concerned with Hawkins seeing the children unannounced.[772] On appeal, Hawkins argued that the lower court should not have applied the clear and convincing standard to the case because the parents

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[758] *Id.* at 545.
[759] *Id.* at 538.
[760] 311 P.3d 1052 (Alaska 2013).
[761] *Id.* at 1058, 1061.
[762] *Id.* at 1054.
[763] *Id.* at 1054.
[764] *Id.* at 1058–59.
[765] *Id.* at 1059, 1061.
[766] *Id.*
[767] *Id.* at 1058, 1061.
[768] 314 P.3d 1202 (Alaska 2013).
[769] *Id.* at 1204–05.
[770] *Id.* at 1204.
[771] *Id.*
[772] *Id.* at 1205.

did not object to her visitation.[773] The supreme court affirmed the lower court's decision, reasoning that court-ordered visitation was different than other types of visitation because the former infringed on the family's rights to make decisions relating to the care of their children.[774] The supreme court further reasoned that Williams and her husband did object to court-ordered visitation by opposing Hawkins' petition and voicing the aforementioned concern.[775] Affirming the lower court's decision, the supreme court held that a grandparent seeking court-ordered visitation with a grandchild must prove by clear and convincing evidence that visitation is in the best interests of the child.[776]

Irma E. v. State

In *Irma E. v. State*,[777] the supreme court held that an adult family member is entitled to a hearing to contest the Office of Children's Services ("OCS") placement decision if OCS denies him or her child custody.[778] Irma took custody of her biological granddaughters after their mother became homeless.[779] OCS then removed Irma's granddaughters from her home because Irma allowed her son to live with them despite his alleged history of sexual abuse.[780] OCS placed Irma's granddaughters with a non-relative foster family and Irma repeatedly asked OCS to place the girls back with her.[781] OCS denied Irma's request and refused to grant a hearing on the matter.[782] On appeal, Irma argued that OCS should have granted her a hearing.[783] The supreme court reversed the lower court's decision, explaining that OCS was required by statute to not only explain its basis for denying a child's placement with an adult family member, but also to inform the adult family member of his or her right to request a hearing to review OCS's decision.[784] Accordingly, the court concluded that OCS's denial of a hearing in this instance was improper.[785]Reversing the lower court's decision, the supreme court held that an adult family member is entitled to a hearing to contest the OCS placement decision if OCS denies him or her child custody.[786]

Kyle S. v. State, Dep't of Health & Social Services

In *Kyle S. v. State, Dep't of Health & Social Services*,[787] the supreme court held that efforts directed at a child in need can satisfy the active efforts requirements of the Indian Child Welfare

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[773] *Id.*
[774] *Id.*
[775] *Id.*
[776] *Id.* at 1204–05.
[777] 312 P.3d 850 (Alaska 2013).
[778] *Id.* at 851.
[779] *Id.*
[780] *Id.*
[781] *Id.*
[782] *Id.* at 852.
[783] *Id.*
[784] *Id.* at 853.
[785] *Id.* at 855.
[786] *Id.* at 851.
[787] 309 P.3d 1262 (Alaska 2013).

Act ("ICWA").[788] Jane, an Indian child, was taken into state custody after reports of physical abuse.[789] Based on Jane's substance abuse problems and her propensity to run away, the lower court determined that Jane was a child in need of aid.[790] On appeal, Kyle S., Jane's father, argued that the Office of Children's Services ("OCS") failed to make the statutorily required "active efforts" to prevent the family's breakup.[791] The supreme court affirmed the lower court's decision, determining that OCS must address a family's particular needs in determining what efforts to take.[792] The supreme court reasoned that because Jane's behavior was the cause of her adjudication as a child in need of aid, OCS could focus their efforts on Jane rather than on reunification with her family.[793] Affirming the lower court's decision, the supreme court held that efforts directed at a child in need can satisfy the active efforts requirements of the ICWA.[794]

Mallory D. v. Malcolm D.

In *Mallory D. v. Malcolm D.*,[795] the supreme court held that a court is not required to impute full-time income to a parent who could work full-time but chooses not to in order to accommodate their child's scheduling needs.[796] In 2009, Mallory and Malcolm divorced and split custody of their three children.[797] Mallory worked thirty hours per week at eighteen dollars per hour.[798] She testified that her schedule allowed her to drive her daughter to and from school but also that her applications for full-time employment were unsuccessful.[799] The lower court held that it was required to impute full-time income to Mallory because she could work full-time but chose not to in order to meet her daughter's scheduling needs.[800] On appeal, Mallory argued that the lower court erred in doing so.[801] The supreme court reversed the lower court's decision, explaining that courts have broad discretion to impute income in cases of voluntary and unreasonable underemployment.[802] Thus, the lower court, according to the supreme court, was not required to impute Mallory's hypothetical full-time income because the statute "does not rigorously command pursuit of maximum earnings.[803] Reversing the lower court's decision, the supreme court held that a court is not required to impute full-time income to a parent who could work full-time but chooses not to in order to accommodate their child's scheduling needs.[804]

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[788] *Id.* at 1270.
[789] *Id.* at 1263.
[790] *Id.* at 1265.
[791] *Id.* at 1267.
[792] *Id.* at 1269.
[793] *Id.*
[794] *Id.* at 1270.
[795] 309 P.3d 845 (Alaska 2013).
[796] *Id.* at 849.
[797] *Id.* at 846.
[798] *Id.*
[799] *Id.*
[800] *Id.* at 849.
[801] *Id.*
[802] *Id.*
[803] *Id.*
[804] *Id.*

Martin v. Martin

In *Martin v. Martin*,[805] the supreme court held that in a child custody case a lesser showing of change in circumstances is needed to modify a visitation schedule than the underlying custody provisions of a parenting agreement.[806] Gregory and Melody Martin dissolved their marriage and formed a parenting agreement with shared physical custody of their children.[807] When the Martins later filed cross-motions to modify the agreement, the lower court refused to modify the custody provisions because there were no substantial changes in circumstances to warrant modification.[808] The lower court did, however, modify the visitation schedule, finding that these modifications were in the children's best interests.[809] On appeal, Gregory argued that it was error for the lower court to modify the visitation schedule while finding that there was no substantial change in circumstances.[810] The supreme court affirmed the lower court's decision, noting that the lower court's finding of no substantial change in the circumstances.[811] Nevertheless, the lower court, as pointed out by the supreme court, did find that minimizing parental contact was in the children's best interest due to "ongoing conflicts."[812] Affirming the lower court's decision, the supreme court held that in a child custody case a lesser showing of change in circumstances is needed to modify a visitation schedule than the underlying custody provisions of a parenting agreement.[813]

Nancy M. v. John M.

In *Nancy M. v. John M.*,[814] the supreme held that it is not error for a court to consider the impact of a parent's status as a renter and student on the stability factor during a custodial determination.[815] The father, John M., owned his own house and worked as a tenured professor at the University of Alaska.[816] The mother, Nancy M., had recently moved to California where she rented an apartment and was in the process of seeking admission to a doctoral program.[817] The lower court held that, in light of these facts, the stability factor in the custodial determination slightly favored the father.[818] Consequently, the lower court awarded primary custody of their child to him.[819] On appeal, Nancy argued that disfavoring a parent for renting and attending graduate school was error.[820] The supreme court affirmed the lower court's decision, reasoning

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[805] 303 P.3d 421 (Alaska 2013).
[806] *Id.* at 425.
[807] *Id.* at 423.
[808] *Id.* at 423–25.
[809] *Id.* at 424–25
[810] *Id.* at 425.
[811] *Id.*
[812] *Id.*
[813] *Id.*
[814] 308 P.3d 1130 (Alaska 2013).
[815] *Id.* at 1135–36.
[816] *Id.* at 1135.
[817] *Id.* at 1131.
[818] *Id.* at 1135.
[819] *Id.* at 1133.
[820] *Id.* at 1135.

that stability can take into account multiple factors.[821] Thus, here, while the status of renter versus homeowner was not dispositive, the stability factor was further influenced by the mother's general, undetermined plans for her future career and education.[822] Affirming the lower court's decision, the supreme court held that it is not error for a court to consider the impact of a parent's status as a renter and student in regards to the stability of the household during a custodial determination.[823]

Native Village of Tununak v. State, Dep't of Health & Social Services

In *Native Village of Tununak v. State, Dep't of Health & Social Services*,[824] the supreme court held that clear and convincing evidence is necessary before departing from the Indian Child Welfare Act's ("ICWA") adoptive preferences.[825] The Office of Children's Services ("OCS") assumed custody of Dawn when she was four months old and placed her in a non-Native foster home.[826] The Native Village of Tununak (the "Tribe") intervened in Dawn's case, arguing for placement with Dawn's grandmother since adoptive preference must be given to the child's extended family unless there is "good cause" for deviation.[827] The lower court held that a preponderance of the evidence supported its conclusion that there was good cause to deviate from the ICWA adoptive preferences, however.[828] On appeal, the Tribe argued that the good cause showing under the ICWA required clear and convincing evidence before departing from the Act's adoptive preferences.[829] The supreme court reversed the lower court's decision, reasoning that Congress' intent and the U.S. Supreme Court's interpretation of the ICWA favored overturning precedential use of the preponderance of the evidence standard in these circumstances.[830] Reversing the lower court's decision, the supreme court held that clear and convincing evidence is necessary before departing from the ICWA's adoptive preferences.[831]

O'Neal v. Campbell

In *O'Neal v. Campbell*,[832] the supreme court held that a parent with equal joint custody may still be required to pay child support where there is a disparity in income between parents.[833] O'Neal and Campbell had a daughter together.[834] Campbell made less than half of O'Neal's income.[835] In 2010, Campbell successfully petitioned the lower court for joint legal custody, shared physical custody and a child support order.[836] O'Neal motioned for reconsideration of the child support

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[821] *Id.* at 1136.
[822] *Id.*
[823] *Id.* at 1135–36.
[824] 303 P.3d 431 (Alaska 2013).
[825] *Id.* at 446.
[826] *Id.* at 433–34.
[827] *Id.* at 433.
[828] *Id.* at 439.
[829] *Id.* at 446.
[830] *Id.* at 449.
[831] *Id.* at 446.
[832] 300 P.3d 15 (Alaska 2013).
[833] *Id.* at 16.
[834] *Id.*
[835] *Id.*
[836] *Id.*

order since she had custody of their daughter fifty-percent of the time.[837] The supreme court affirmed the lower court's decision, reasoning that child support payments were based on both the relative percentage of physical custody as well as the relative adjusted incomes of the parents.[838] Thus, according to the court, awarding child support to Campbell was not an abuse of discretion under the circumstances.[839] Affirming the lower court's decision, the supreme court held that a parent with equal joint custody may still be required to pay child support where there is a disparity in income between the parents.[840]

Petrilla v. Petrilla

In *Petrilla v. Petrilla*,[841] the supreme court held that decisions denying motions to modify child support payments must be supported by a sufficient factual basis.[842] Brian and Roxana Petrilla divorced and subsequently shared custody of their daughter until late 2011 when Brian began preparations to move to Nevada.[843] Roxana sought to modify the child support payment, filing a motion to impute Brian's income from 2011 to calculate the support amount.[844] After an earlier determination that Brian's imputable income was $44,387, Brian submitted a motion to modify the payments based on his new position in Nevada, which paid $33,000 per year.[845] The lower court denied this motion reasoning that Brian had waited until an unfavorably high amount was imputed to begin searching for work.[846] On appeal, Brian argued that the lower court had abused its discretion in denying his motion for modification despite his new salary information.[847] The supreme court reversed the lower court's decision, reasoning that the lower court was required to make factual determinations before denying Brian's motion.[848] These determinations included Brian's earning capability and the availability of higher paying jobs in Nevada.[849] Reversing the lower court's decision, the supreme court held that decisions denying motions to modify child support payments must be supported by a sufficient factual basis.[850]

Philip J. v. State, Dep't of Health & Social Services

In *Philip J. v. State Department of Health & Social Services*,[851] the supreme court held that social workers' failure to ensure an abusive father seeks aid does not render the workers' efforts to reunify an Indian father with his family inadequate.[852] Philip had a long documented history of

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[837] *Id.*
[838] *Id.*
[839] *Id.*
[840] *Id.*
[841] 305 P.3d 302 (Alaska 2013).
[842] *Id.* at 302.
[843] *Id.* at 303.
[844] *Id.* at 303–04.
[845] *Id.* at 304.
[846] *Id.* at 305.
[847] *Id.* at 306.
[848] *Id.* at 307.
[849] *Id.*
[850] *Id.* at 302.
[851] 314 P.3d 518 (Alaska 2013).
[852] *Id.* at 529.

domestic abuse and sexual assault against his wife and children beginning in 2004.[853] In April 2010, soon after Philip had been released from prison, an Office of Children Services ("OCS") family supervisor visited the family and identified safety threats including domestic violence, sexual abuse and substance abuse.[854] As a result, the family supervisor took custody of Philip's seven children, eventually placing them in their grandmother's custody.[855] Throughout 2010 OCS attempted to engage Philip in a case plan to reunify him with his children, to which he refused to cooperate.[856] The lower court eventually terminated Philip's parental rights, ruling that his children were in need of aid.[857] On appeal, Philip argued that OCS's efforts to reunite him with his children were inadequate.[858] The supreme court affirmed the lower court's decision, reasoning that the prolonged and continued efforts of OCS to encourage Philip to attend anger management, domestic violence and batter's programs were sufficient.[859] Affirming the lower court's decision, the supreme court held that social workers' failure to ensure an abusive father seeks aid does not render the workers' reunification efforts inadequate.[860]

Pfeil v. Lock

In Pfeil v. Lock,[861] the supreme court held that applying the *Rose* factors to the division of marital property in divorce is inappropriate when assets have been commingled.[862] In 2011, Lock filed for divorce following four years of cohabitation and marriage.[863] In dividing assets, the parties could agree how they would allocate ownership of the two homes they owned but disputed the distribution of a truck and a four-wheeler.[864] On appeal, Lock argued for application of the *Rose* factors to their real property, treating their divorce as a rescission and returning both parties to the state they were in prior to marriage, but for application of different factors to the truck and four-wheeler.[865] The supreme court reversed the lower court's decision, reasoning that while limiting equitable division to a single asset may be appropriate, applying *Rose* rescission principles to a single asset was not.[866] Divorcing spouses, according to the court, have either maintained separate economic identities or they have not, and where economic identities and assets have been commingled, *Rose* rescission is not appropriate.[867] Reversing the lower court's decision, the supreme court held that applying the *Rose* factors to the division of marital property in divorce is inappropriate where assets have been commingled.[868]

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[853] *Id.* at 520–25.
[854] *Id.* at 523.
[855] *Id.*
[856] *Id.* at 524.
[857] *Id.* at 526–27.
[858] *Id.* at 528.
[859] *Id.* 528–30.
[860] *Id.* at 529.
[861] 311 P.3d 649 (Alaska 2013).
[862] *Id.* at 654–55.
[863] *Id.* at 650–51.
[864] *Id.* at 651.
[865] *Id.*
[866] *Id.* at 654–55.
[867] *Id.* at 653, 655.
[868] *Id.* at 654–55.

Reilly v. Northrop

In *Reilly v. Northrop*,[869] the supreme court held that a parent could be voluntarily underemployed when more lucrative employment could be found outside the parent's trained field.[870] In 2003, Reilly and Vinnette had a child, while Reilly was working in Alaska as a drilling engineer.[871] In 2004, Reilly moved to Montana but was unable to obtain comparable employment and subsequently had a second child who, like his first child, had special needs.[872] On appeal, Reilly argued that his child support payments should based on his current income and, consequently, should be reduced.[873] The supreme court affirmed the lower court's decision, reasoning that underemployment could be considered voluntary even if it was the result of failed good faith attempts to gain sufficient employment.[874] Thus, the lower court did not err in imputing Reilly's income based on the average income of workers in a similar field in southwest Montana.[875] Affirming the lower court's decision, the supreme court held that a parent could be found to be voluntarily underemployed when more lucrative employment could be found outside the parent's trained field.[876]

Ronny M. v. Nanette H.

In *Ronny M. v. Nanette H.*,[877] the supreme court held that the fact that the non-custodial parent earns a smaller income than the primary physical custodial parent does not constitute "good cause" to vary child support payments.[878] In the late 1990s and early 2000s, Ronny M. and Nanette H. lived in Florida and had two children together.[879] Eventually, the couple separated, with Nanette maintaining custody.[880] In 2009, Nanette moved to Alaska with the two children.[881] In November 2010 Nanette filed in the lower court for sole legal and primary physical custody of the children as well as to receive child support payments.[882] In 2011, the lower court ordered Ronny to pay Nanette $215 per month in child support.[883] On appeal, Ronny argued that the lower court should have found "good cause" to vary the child support payments because Nanette had enough money to support the children without his payments that he could not afford.[884] The supreme court affirmed the lower court's decision, reasoning that even though Nannette made more money than Ronny, the difference between their incomes did not amount to a showing of

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[869] 314 P.3d 1206 (Alaska 2013).
[870] *Id.* at 1210.
[871] *Id.*
[872] *Id.* at 1211.
[873] *Id.*
[874] *Id.* at 1213–14.
[875] *Id.* at 1217–18.
[876] *Id.* at 1210.
[877] 303 P.3d 392 (Alaska 2013).
[878] *Id.* at 406.
[879] *Id.* at 396.
[880] *Id.*
[881] *Id.*
[882] *Id.* at 395.
[883] *Id.* at 399, 406.
[884] *Id.* at 405–06

manifest injustice, which is required to find good cause.[885] Affirming the lower court's decision, the supreme court held that the fact that the non-custodial parent earns a smaller income than the primary physical custodial parent does not constitute "good cause" to vary child support payments.[886]

Rosenblum v. Perales

In *Rosenblum v. Perales*,[887] the supreme court held that a court is not barred from considering a parent's military deployment when resolving a custody dispute.[888] Perales sued Rosenblum, the father of her four-year-old son, for primary physical custody and shared legal custody.[889] The trial court awarded custody to Perales.[890] On appeal, Rosenblum argued that the trial court's decision violated the law by taking into account his regular military deployments in determining custody.[891] The law mandated that "a parent's temporary duty, mobilization, or deployment to military service and the resultant temporary disruption to the child of the parent may not be a factor in a court's [custody] decision."[892] The supreme court affirmed the lower court's decision, reasoning that "temporary" should be given its ordinary meaning.[893] Therefore, Rosenblum's recurring deployment for a third of every year was not temporary because each deployment continued beyond a limited period of time.[894] Accordingly, it was also reasonable to conclude that the disruption this deployment schedule would cause to his son would not be temporary.[895] Affirming the lower court's decision, the supreme court held that a court is not barred from considering a parent's military deployment when resolving a custody dispute.[896]

Schaub v. Schaub

In *Schaub v. Schaub*,[897] the supreme court held that laches do not bar the prospective division of retirement benefits pursuant to a marriage dissolution.[898] Theresa and "Hank" Schaub separated in 1986.[899] In 1992, Hank petitioned the court to dissolve their marriage, representing that he had made diligent efforts but had been unable to locate Theresa.[900] Subsequently, in 2010, Theresa filed a motion seeking a post-decree equitable distribution of their property.[901] On appeal, Hank

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[885] *Id.* at 406.
[886] *Id.*
[887] 303 P.3d 500 (Alaska 2013).
[888] *Id.* at 509, 506.
[889] *Id.* at 502.
[890] *Id.* at 503.
[891] *Id.*
[892] *Id.* at 505 (internal citation omitted).
[893] *Id.* at 506.
[894] *Id.*
[895] *Id.*
[896] *Id.* at 509, 506.
[897] 305 P.3d 337 (Alaska 2013).
[898] *Id.* at 345.
[899] *Id.* at 338–39.
[900] *Id.* at 339.
[901] *Id.*

raised the defense of laches because it had taken Theresa many years to petition the court.[902] The supreme court affirmed the lower court's decision, reasoning that laches did not bar the division of Hank's future retirement benefits.[903] Here, Hank would not suffer unreasonable prejudice from this prospective division, while Theresa would certainly be prejudiced if denied her share.[904] Affirming the lower court's decision, the supreme court held that laches do not bar the prospective division of retirement benefits to a marriage dissolution.[905]

Sherman v. State, Dep't of Health and Social Services

In *Sherman v. State, Dep't of Health and Social Services*,[906] the supreme court held that parents who neglect to comply with Office of Child Services ("OCS") developed case plans may be deemed to have failed to remedy previous abandonment of their child.[907] In 2012, OCS took custody of Sherman's son, Kadin, after determining that both Kadin and his mother tested positive for cocaine.[908] OCS had previously removed Sherman's other three children from his care for the exact same reason.[909] Soon thereafter, OCS developed a case plan wherein Sherman could regain custody of Kadin if he submitted to psychological tests, provided OCS with housing and income information and attended monthly case planning meetings.[910] After refusing to follow nearly every aspect of the case plan, the lower court terminated Sherman's rights to Kadin.[911] On appeal, Sherman argued that he neither abandoned nor failed to remedy Kadin's abandonment.[912] The supreme court affirmed the lower court's decision, reasoning that, in failing to participate in nearly every aspect of the case plan, Sherman had both abandoned and failed to remedy such abandonment[913] The court further reasoned that this conclusion was only strengthened by Sherman's continued secrecy and recalcitrance towards OCS caseworkers.[914] Affirming the lower court's decision, the supreme court held that parents who neglect to comply with OCS developed case plans may be deemed to have failed to remedy previous abandonment of their child.[915]

Swaney v. Granger

In *Swaney v. Granger*,[916] the supreme court held that modification of child support orders in existence before the initial motion for modification is served on the opposing party is

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[902] *Id.*
[903] *Id.* at 345.
[904] *Id.*
[905] *Id.*
[906] 310 P.3d 943 (Alaska 2013).
[907] *Id.* at 946
[908] *Id.*
[909] *Id.* at 946–47.
[910] *Id.* at 948.
[911] *Id.*
[912] *Id.*
[913] *Id.* at 951–52.
[914] *Id.*
[915] *Id.* at 946.
[916] 297 P.3d 132 (Alaska 2013).

improper.[917] In 2005, the lower court granted Granger and Swaney a divorce and issued a child custody and support order covering their four minor children.[918] In 2008, Granger filed a motion to modify the child custody and support order.[919] The lower court subsequently granted the motion.[920] The court, however, only modified the custody aspect of the order, leaving the child support aspect to be determined later.[921] Three years later the lower court revisited the issue and modified the child support aspect of the order as well, retroactively changing the amount of several of the child support payments due to be paid before the motion for modification was served on Swaney in 2008.[922] On appeal, Swaney argued that modifying child support orders in this manner violated Alaska Rule of Civil Procedure 90.3.[923] The supreme court reversed the lower court's decision, reasoning that Alaska Rule of Civil Procedure 90.3 prohibited the retroactive modification of existing child support orders for the period before the motion for modification was served on the opposing party.[924] Reversing the lower court's decision, the supreme court held that modification of child support orders in existence before the initial motion for modification is served on the opposing party is improper.[925]

Urban v. Urban

In *Urban v. Urban*,[926] the supreme court held that in a divorce proceeding, a court may rely on property tax assessments over a real estate agent's estimate.[927] In their divorce proceeding, Martha and Delbert Urban disagreed on the value of land they owned.[928] The lower court ultimately valued the couple's property based on a tax assessment.[929] On appeal, Delbert argued that the superior court erred in its property valuation.[930] The supreme court affirmed the lower court's decision, reasoning that since the lower court's decision was reviewed for abuse of discretion, its decision that the tax assessment was more reliable than the realtor's opinion was not reversible error.[931] Affirming the lower court's decision, the supreme court held that reliance on tax valuation in regards to property appraisal is reasonable.[932]

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[917] *Id.* at 136.
[918] *Id.* at 133.
[919] *Id.* at 134.
[920] *Id.*
[921] *Id.*
[922] *Id.*
[923] *Id.* at 136.
[924] *Id.*
[925] *Id.*
[926] 314 P.3d 513 (Alaska 2013).
[927] *Id.* at 515–16.
[928] *Id.* at 514.
[929] *Id.* at 515.
[930] *Id.*
[931] *Id.*
[932] *Id.* at 515–16.

Wagner v. Wagner

In *Wagner v. Wagner*,[933] the supreme court held that courts have a duty to inform a pro se litigant of the proper procedure for an action when the litigant exhibits behavior that constitutes a lack of familiarity with the rules.[934] Felicia and Richard Wagner married in 1993.[935] When Felicia filed for divorce in 2010 there was a dispute about the division of marital property.[936] Richard failed to appear at three of the four pre-trial conferences and at trial but had called the court's legal secretary to ask for a continuance prior to three of his four absences.[937] Richard's requests were never granted and he was never warned of the proper procedure for requesting a continuance.[938] At trial, the court determined that, based on Richard's repeated absence, it had no choice but to determine that his absence from trial was voluntary and thus made several findings of fact and conclusions of law based on Felicia's testimony alone.[939] On appeal, Richard argued that the court erred in concluding that his absence was voluntary and in proceeding to trial without him.[940] The supreme court reversed the lower court's decision, reasoning that Richard's continued attempts to request a continuance by calling the court's secretary evidenced his belief that he was utilizing the appropriate procedure.[941] Based on this belief, combined with the fact that the lower court never ordered Richard to cease calling for continuances or advised him that he needed to file a motion for continuance, the court further reasoned that Richard's behavior constituted a lack of familiarity with the rules and thus was a legitimate request for continuance.[942] Reversing the lower court's decision, the supreme court held courts have a duty to inform a pro se litigant of the proper procedure for an action when the litigant exhibits behavior that constitutes a lack of familiarity with the rules.[943]

Wanner-Brown v. Brown

In *Wanner-Brown v. Brown*,[944] the supreme court held that all retirement benefits vested during the course of a marriage are considered marital property regardless of when the retirement classification status was determined.[945] Prior to his marriage, Conrad worked for the State in a position with a retirement classification of Tier 1.[946] He later left his position and cashed out his retirement benefits.[947] After his marriage to Tammy, Conrad again became employed by the State and completely re-earned his retirement benefits during the course of the marriage.[948]

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[933] 299 P.3d 170 (Alaska 2013).
[934] *Id.* at 174.
[935] *Id.* at 172.
[936] *Id.*
[937] *Id.*
[938] *Id.* at 172–73.
[939] *Id.*
[940] *Id.* at 173.
[941] *Id.* at 174, 176.
[942] *Id.*
[943] *Id.*
[944] 312 P.3d 1106 (Alaska 2013).
[945] *Id.* at 1111.
[946] *Id.* at 1107.
[947] *Id.*
[948] *Id.*

While new employees at this time were classified as Tier 2, Conrad was able to retain his Tier 1 classification due to this prior employment with the State.[949] The Tier 1 status allowed Conrad to receive full retirement benefits five years earlier, resulting in an almost $80,000 increase in the present value of his benefits.[950] After Conrad filed for divorce, the lower court determined that Conrad should be classified as a Tier 2 employee when determining the distribution of marital assets because his Tier 1 status was acquired before the marriage.[951] The supreme court reversed the lower court's decision, reasoning that all benefits obtained during a marriage are marital property.[952] As Conrad re-earned all his benefits during the marriage, his benefits should have been classified as Tier 1 when determining the distribution of marital assets.[953] Reversing the lower court's decision, the supreme court held that all retirement benefits vested during the course of a marriage are considered marital property regardless of when the retirement classification status was determined.[954]

Wilhour v. Wilhour

In *Wilhour v. Wilhour*,[955] the supreme court held that factual disputes over a parent's potential future income necessitate an evidentiary hearing to determine child support payments.[956] After Joshua Wilhour relocated to move closer to his son, the lower court still used his previous income to determine his child support payments.[957] His new income following relocation was substantially less than before, but Jacqueline Wilhour argued that the reduction was merely temporary.[958] On appeal, he argued that the factual dispute over his income necessitated an evidentiary hearing that was denied by the lower court.[959] The supreme court reversed the lower court's decision, reasoning that there was a genuine factual dispute over whether Joshua's income reduction was temporary or permanent.[960] Additionally, according to the court, any income change resulting from a parent moving closer to his or her child should rarely weigh against that parent.[961] Reversing the lower court's decision, the supreme court held that factual disputes over a parent's potential future income necessitate an evidentiary hearing to determine child support payments.[962]

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[949] *Id.*
[950] *Id.*
[951] *Id.*
[952] *Id.* at 1111.
[953] *Id.*
[954] *Id.*
[955] 308 P.3d 884 (Alaska 2013).
[956] *Id.* at 888–89.
[957] *Id.* at 887.
[958] *Id.*
[959] *Id.* at 888.
[960] *Id.*
[961] *Id.* at 889.
[962] *Id.* at 888–89.

HEALTH LAW

Top

In re Stephen O.

In *In re Stephen O.*,[963] the supreme court held that in an involuntary commitment hearing, the court must consider whether the psychiatric patient is able to live safely outside of a controlled environment.[964] In 2004 Stephen had heard voices that made him fearful and led him to seriously injure himself by jumping off a 16 to 18 foot ledge.[965] In 2009, Stephen claimed he began hearing the voice of Jesus telling him to repent and start attending church.[966] Accordingly, the lower court found Stephen gravely disabled and ordered his involuntary commitment to a mental facility and for his involuntary administration of psychotropic drugs.[967] The supreme court reversed the lower court's decision, reasoning that in determining whether a patient is severely disabled, the court is not to consider if commitment would be preferable or in the patient's best interest but whether the patient can live safely without commitment.[968] The lower court's reliance upon hearsay, the patient's history involving markedly different symptoms and his willingness to receive medical treatment all corroborate against a finding of being severely disabled.[969] Reversing the lower court's decision, the supreme court held that in involuntary commitment hearings, the court must consider whether the patient is able to live safely outside of a controlled environment.[970]

IMMIGRATION LAW

Top

Villars v. Villars

In *Villars v. Villars*,[971] the supreme court held that, as her immigration sponsor, a former husband's obligation to support his non-citizen ex-wife was correctly adjusted for the time daughter did not live with the ex-wife, the ex-wife's move to a different state and the ex-wife's earnings.[972] Richard Villars sponsored Olga Villars' immigration to America.[973] The couple ultimately divorced in 2009 with a decree maintaining his sponsoring obligation.[974] Olga then moved from Alaska to California and married Nasif in late 2009.[975] From January to November 2010, Richard did not pay any support to Olga causing her to file a motion for those payments.[976]

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[963] 314 P.3d 1185 (Alaska 2013).
[964] *Id.* at 1193.
[965] *Id.* at 1187.
[966] *Id.*
[967] *Id.* at 1191.
[968] *Id.* at 1193.
[969] *Id.* at 1194–96.
[970] *Id.* at 1193.
[971] 305 P.3d 321 (Alaska 2013).
[972] *Id.* at 325.
[973] *Id.* at 323.
[974] *Id.*
[975] *Id.*
[976] *Id.*

The lower court found that Olga was not owed that support, however.[977] On appeal, Olga challenged the lower court's use of California's lower federal poverty level, the time she and her daughter had lived separately and her 2010 earnings in its calculations.[978] The supreme court affirmed the method used by the lower court, reasoning that support obligations must be adjusted down when a family member leaves the household.[979] Additionally, the court reasoned that the applicable poverty level was the state where the potential recipient was currently living and that support obligations should also be offset by any earned income.[980] Affirming the lower court's calculation method, the supreme court held that, as her immigration sponsor, a former husband's obligation to support his non-citizen ex-wife was correctly adjusted.[981]

INSURANCE LAW

Top

Dearlove v. Campbell

In *Dearlove v. Campbell*,[982] the supreme court held that voluntary pre-trial payments are sometimes included in the recipient's total recovery for purposes of Alaska Civil Rule 68 analysis.[983] In a two-car collision, Dearlove, the driver of the first vehicle, collided with and injured Campbell, a passenger in the second vehicle.[984] Campbell's insurance covered Campbell's medical bills of $20,000 and established a subrogation claim against Dearlove.[985] Dearlove first offered to settle with Campbell for $18,000, but Campbell denied the offer because it would have left her responsible for the subrogation claim.[986] Subsequently, Dearlove's insurance company paid the subrogation claim of $20,000 to Campbell's insurance company.[987] Dearlove then made a second settlement offer of $5,000, which Campbell rejected as well.[988] A jury later returned a total award of $3,870 for Campbell and both parties claimed prevailing party status and, accordingly, moved for attorneys' fees under Rule 68.[989] The lower court ruled that Dearlove should be awarded attorney's fees accrued after the second offer.[990] On appeal, Dearlove argued that she should be awarded attorney's fees accrued after the first offer as well.[991] The supreme court affirmed the lower court's decision, reasoning that not including the subrogation payment in Campbell's total recovery to be compared to the first offer to determine

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[977] *Id.* at 324.
[978] *Id.*
[979] *Id.* at 325, 327.
[980] *Id.*
[981] *Id.* at 325.
[982] 301 P.3d 1230 (Alaska 2013).
[983] *Id.* at 1235.
[984] *Id.* at 1231–32.
[985] *Id.* at 1232.
[986] *Id.* at 1234, 1232.
[987] *Id.* at 1232.
[988] *Id.* at 1235, 1232
[989] *Id.* at 1232.
[990] *Id.* at 1233.
[991] *Id.*

if Dearlove was entitled to attorney's fees could lead to abusive settlement practices.[992] Thus, according to the court, attorney's fees accrued by Dearlove between her two settlement offers was not available because Campbell's recovery to be compared to Dearlove's offer of $18,000 was $23,870.[993] Affirming the lower court's decision, the supreme court held that voluntary pre-trial payments are sometimes included in the recipient's total recovery for purposes of Rule 68 analysis.[994]

McDonnell v. State Farm Mutual Automobile Insurance Co.

In *McDonnell v. State Farm Mutual Automobile Insurance Co.*,[995] the supreme court held that personal injury claims are not subject to statutorily mandated appraisal under Alaska's insurance code.[996] In 2007, McDonnell and her son were in a car accident.[997] McDonnell claimed both her and her son suffered back injuries from this accident.[998] State Farm, McDonnell's insurer, however, did not believe the aforementioned accident was the source of all the claimed injuries.[999] Unable to settle, McDonnell asked for a declaratory judgment arguing that, statutorily, her claims were entitled to mandatory appraisal.[1000] Subsequently, the lower court granted summary judgment in favor of State Farm.[1001] On appeal, McDonnell argued again for the application of mandatory appraisal to her claims.[1002] The supreme court affirmed the lower court's decision, reasoning that the statutorily mandated appraisal applied to, among other things, personal property.[1003] Thus, according to the court, given the context, personal injury claims were not included in personal property and, consequently, fell outside the statute's bounds.[1004] Affirming the lower court's decision, the supreme court held that personal injury claims are not subject to statutorily mandated appraisal.[1005]

SOP, Inc. v. State, Dep't of Natural Resources

In *SOP, Inc. v. State, Dep't of Natural Resources*,[1006] the supreme court held that a state park issuing special use permits not revocable at will create unconstitutional easements over public land.[1007] The Nancy Lake State Recreation Area (the "Park") granted numerous special use permits that allowed private land owners to use ATVs on Park trails to access their remote

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[992] *Id.* at 1234–35.
[993] *Id.* at 1235.
[994] *Id.*
[995] 299 P.3d 715 (Alaska 2013).
[996] *Id.* at 723.
[997] *Id.* at 718.
[998] *Id.*
[999] *Id.*
[1000] *Id.*
[1001] *Id.*
[1002] *Id.* at 719.
[1003] *Id.* at 721.
[1004] *Id.*
[1005] *Id.* at 723.
[1006] 310 P.3d 962 (Alaska 2013).
[1007] *Id.* at 964.

properties.[1008] As these properties became more populated, ATV usage rose considerably, damaging the wildlife and vegetation surrounding the trails.[1009] SOP, Inc. sued to enjoin the Park from issuing these special use permits.[1010] On appeal, the Park argued that the permits were mere licenses within the scope of the Park's authority to grant.[1011] The supreme court reversed the lower court's decision, reasoning that the permits constituted appurtenant easements because the permits were revocable only for cause and every remote private property owner who applied received a permit on the basis of owning property in that area.[1012] The court further reasoned that, as easements, the permits constituted an impermissible, unconstitutional disposal of state park land.[1013] Reversing the lower court's decision, the supreme court held that a state park issuing special use permits not revocable at will create unconstitutional easements over public land.[1014]

United Services Automobile Association v. Neary

In *United Services Automobile Association v. Neary*,[1015] the supreme court held that the number of insureds does not affect an explicit per-occurrence policy limit.[1016] While handling his father's gun a minor accidently shot two friends with a single bullet, killing one and injuring the other.[1017] The parents of the victims sued the minor, his parents and their insurer, United Services Automobile Association ("USAA").[1018] The parents' plan, which covered themselves and their son, included a limit of liability provision that limited the coverage of each occurrence to $300,000.[1019] The policy further stated that the total liability for USAA under the plan resulting from any one occurrence would not be greater than that limit regardless of the number of insureds.[1020] The lower court held that each of the insureds were subject to an independent per-occurrence limit, resulting in potential liability of up to $900,000 for USAA.[1021] On appeal, USAA argued that the per-occurrence limit was not dependent on the number of insureds.[1022] The supreme court reversed the lower court's decision, reasoning that while ambiguities should be construed in favor of the insured, the language of this policy was clear and unambiguous.[1023] Reversing the lower court's decision, the supreme court held that the number of insureds does not affect an explicit per-occurrence policy limit.[1024]

[1008] *Id.* at 963.
[1009] *Id.* at 964.
[1010] *Id.* at 966.
[1011] *Id.* at 967.
[1012] *Id.* at 967–69.
[1013] *Id.* at 969.
[1014] *Id.*
[1015] 307 P.3d 907 (Alaska 2013).
[1016] *Id.* at 910.
[1017] *Id.* at 909.
[1018] *Id.*
[1019] *Id.*
[1020] *Id.*
[1021] *Id.* at 910.
[1022] *Id.*
[1023] *Id.* at 910–11.
[1024] *Id.* at 910.

MARITIME LAW

Top

Janes v. Alaska Railbelt Marine, LLC

In *Janes v. Alaska Railbelt Marine, LLC*,[1025] the supreme court held that a plaintiff who asserts that a shipowner's failure to provide safer, alternative devices or methods that renders a vessel unseaworthy bears the initial burden of proving that the alternative devices or methods are feasible.[1026] Janes, a railroad conductor, sued Alaska Railbelt Marine, LLC, for injuries he suffered while loading railcars owned by the corporation onto a barge via a set of tracks.[1027] Janes alleged that placing cargo onto the tracks and failing to provide devices to sTop moving railcars from hitting the non-rail cargo made the barge unseaworthy.[1028] At trial, the lower court found that Janes had not demonstrated that safer alternatives for stopping the railcars existed, and, consequently, his unseaworthiness claim must fail.[1029] On appeal, Janes argued that the lower court erred in requiring him to prove the feasibility of alternatives for stopping the railcars.[1030] The supreme court affirmed the lower court's decision, reasoning that because Janes' theories of unseaworthiness posited that the barge was not reasonably fit due to the failure to provide one of two alternative stopping devices, it was critical that the devices would work the way that Janes claimed they would.[1031] Thus, according to the court, since Janes's unseaworthiness claim depended on a showing that additional stopping devices were needed to make the barge reasonably fit, Jane's lack of demonstration was dispositive.[1032] Affirming the lower court, the supreme court held that a plaintiff who claims unseaworthiness based on a shipowner's failure to provide safer, alternative devices or methods bears the burden of proving the feasibility of the alternative devices or methods.[1033]

PROPERTY LAW

Top

Beals v. Beals

In *Beals v. Beals*,[1034] the supreme court held that absent evidence of intent to keep property separate it will be considered marital.[1035] The Bealses married in 2000 and divorced in 2011.[1036] Prior to the marriage Mark Beals owned a home at 534 Second Avenue.[1037] The couple refinanced this home in order to convert $42,092 of equity to cash, which was used to purchase

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[1025] 309 P.3d 867 (Alaska 2013).
[1026] *Id.* at 883.
[1027] *Id.* at 873.
[1028] *Id.* at 873–74.
[1029] *Id.* at 874.
[1030] *Id.* at 880–81.
[1031] *Id.* at 883.
[1032] *Id.*
[1033] *Id.*
[1034] 303 P.3d 453 (Alaska 2013).
[1035] *Id.* at 460.
[1036] *Id.* at 456.
[1037] *Id.*

an adjacent lot.[1038] Since this cash could be "easily tracked and separated from the marital assets," the lower court decided Mark was entitled to $42,092 of lot's $45,000 worth.[1039] On appeal, Patricia argued that Mark had not presented evidence sufficient to characterize the adjacent lot as separate property and was thus subject to marital distribution.[1040] The supreme court reversed the lower court's decision, reasoning that except where marriage is short and no commingling of assets has occurred, property is presumed marital absent evidence of intent to the contrary.[1041] Here, the adjacent lot was titled in both Mark's and Patricia's names.[1042] Reversing the lower court's decision, the supreme court held that absent evidence of an intent to keep property separate the property will be considered marital.[1043]

Burke v. Maka

In *Burke v. Maka*,[1044] the supreme court held that the doctrine of laches precludes a party from challenging the validity of a covenant where the party knew of the shared use yet failed to assert a right to exclusive use for more than four years.[1045] Lot 9A shared a driveway with adjacent Lot 9B.[1046] In 2001, the owner of both lots filed a covenant granting each lot access to a shared driveway.[1047] However, this covenant was not recorded until 2004.[1048] The Burkes, purchased Lot 9A in 2004.[1049] Although they were unaware of the covenant, the Burkes stipulated that its recording before the sale placed them on constructive notice.[1050] Further, the Burkes did not object when the owner of 9B utilized the shared driveway.[1051] It was not until 2009 that the Burkes contested the covenant, filing suit to quiet title, arguing that the covenant was invalid.[1052] The supreme court affirmed the lower court's decision, reasoning that evidence of the Burke's knowledge of the covenant combined with their failure to object to the shared use of the driveway for more than four years constituted an unreasonable delay in seeking relief that consequently prejudiced the owners of Lot 9B.[1053] Affirming the lower court's decision, the supreme court held that the doctrine of laches precludes a party from challenging the validity of a covenant where the party knew of the shared use yet failed to assert a right to exclusive use for more than four years.[1054]

[1038] *Id.* at 457.
[1039] *Id.* (internal quotation marks omitted).
[1040] *Id.* at 458.
[1041] *Id.* at 460.
[1042] *Id.*
[1043] *Id* .
[1044] 296 P.3d 976 (Alaska 2013).
[1045] *Id*. at 980.
[1046] *Id*. at 977.
[1047] *Id*.
[1048] *Id*. at 978.
[1049] *Id*.
[1050] *Id.*
[1051] *Id*.
[1052] *Id*.
[1053] *Id*. at 980
[1054] *Id.*

Gefre v. Davis Wright Tremaine, LLP

In *Gefre v. Davis Wright Tremaine, LLP*,[1055] the supreme court held that the ten-year statute of limitations is inapplicable to tort claims that are merely attendant to an underlying claim involving an ownership interest in property.[1056] In response to Petro Alaska's President and majority shareholder personally acquiring a piece of property that was intended to belong to the corporation, the corporation's shareholders filed a derivative action for fiduciary fraud, fraudulent conveyance, legal malpractice, and civil conspiracy against the corporation's former attorneys.[1057] The superior court dismissed the shareholders' derivative action, finding that the claims were time-barred.[1058] On appeal, the shareholders argued that the superior court erred in refusing to apply a ten-year statute of limitations to the conspiracy and fraudulent conveyance claims which were related to the acquisition of the property at issue.[1059] The supreme court affirmed the lower court's decision, reasoning that the ten-year statute of limitations did not apply to the civil conspiracy and fraudulent conveyance claims because the claims did not directly involve the determination of a right or claim to or interest in the underlying real property.[1060] Affirming the lower court's decision, the court held that the statute's ten-year limitations period does not apply to tort claims that are merely attendant to an underlying claim involving a property interest.[1061]

Griffin v. Weber

In *Griffin v. Weber*,[1062] the supreme court held that the burden of proof to reform a quitclaim deed into a security agreement is met when both parties to the transaction testify that they understood the deed's purpose was to provide security for the transaction.[1063] In 2009, Weber agreed to cosign a refinanced mortgage that Griffin wanted to take out on her property.[1064] Before taking out the mortgage, Griffin executed a quitclaim deed to transfer ownership of her property from only herself to herself and Weber.[1065] In 2010, Griffin wanted to refinance again, this time with her fiancé as cosigner.[1066] The bank asked that Weber relinquish his interest in the property first, this dispute arose and Griffin asked the court to reform the 2009 deed into a security instrument.[1067] At trial, Griffin testified that a purpose of the transaction was to provide security to Weber in case she defaulted on the mortgage.[1068] Furthermore, Weber testified that the purpose of the quitclaim deed was to secure his interest in the loan in case something

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[1055] 306 P.3d 1264 (Alaska 2013).
[1056] *Id.* at 1272.
[1057] *Id.* at 1267–70.
[1058] *Id.* at 1271.
[1059] *Id.* at 1271–72.
[1060] *Id.* at 1272.
[1061] *Id.*
[1062] 299 P.3d 701 (Alaska 2013).
[1063] *Id.* at 701.
[1064] *Id.* at 701–02.
[1065] *Id.* at 702.
[1066] *Id.*
[1067] *Id.*
[1068] *Id.* at 703.

happened to Weber.[1069] The supreme court reversed the lower court's decision, reasoning that the parties' testimonies provided the clear and convincing evidence necessary to show that a security was intended.[1070] Reversing the lower court's decision, the supreme court held that the burden of proof to reform a quitclaim deed into a security agreement is met when both parties to the transaction testify that they understood the deed's purpose was to provide security for the transaction.[1071]

McCarrey v. Kaylor

In *McCarrey v. Kaylor*,[1072] the supreme court held that the Federal Land Policy and Management Act ("FLPMA") does not terminate classifications created by the Small Tract Act.[1073] The Kaylors owned a property directly adjacent to a property owned by the McCarreys.[1074] The McCarreys' property lot had its origins in the Small Tract Act, an act that authorized the sale of public lands to private parties.[1075] Furthermore, the deed accompanying the McCarrey lot reserved a fifty-foot right-of-way that allowed access to a section of the Kaylor lot.[1076] Eventually, the McCarreys planned to build a fence that would restrict the Kaylors use of the right-of-way.[1077] The Kaylors then commenced this action to establish a prescriptive easement and obtain an injunction preventing the erection of the proposed fence.[1078] On appeal, the McCarreys argued that the right-of-way on their land was terminated when the Small Tract Act was repealed by the FLPMA.[1079] The supreme court affirmed the lower court's decision, explaining that the right-of-way survived the repeal of the Small Tract Act because the FLPMA did not explicitly terminate the classifications created by the Small Tract Act, one of which formed the basis for this right-of-way.[1080] The court further reasoned that such classifications survived since the Bureau of Land Management's regulations stated that the classifications created by the Small Tract Act remained effective despite the Act's repeal.[1081] Furthermore, the court noted that the FLPMA was limited in scope to public lands and that it probably did not affect the private land interests involved here.[1082] Affirming the lower court's decision, the supreme court held that the Federal Land Policy and Management Act ("FLPMA") does not terminate classifications created by the Small Tract Act.

[1069] *Id.* at 702.
[1070] *Id.* at 704.
[1071] *Id.* at 701.
[1072] 301 P.3d 559 (Alaska 2013).
[1073] *Id.* at 567.
[1074] *Id.* at 561.
[1075] *Id.* at 561, 565.
[1076] *Id.* at 562.
[1077] *Id.* at 561.
[1078] *Id.*
[1079] *Id.* at 564.
[1080] *Id.* at 565.
[1081] *Id.* at 566.
[1082] *Id.*

Schweitzer v. Salamatof Air Park Subdivision Owners, Inc.

In *Schweitzer v. Salamatof Air Park Subdivision Owners, Inc.*,[1083] the supreme court held that the determination of aircraft ownership is not preempted by the Federal Aviation Administration's ("FAA") authority.[1084] In 2010, Schweitzer filed a claim of exemption to prevent the seizure of an incomplete airplane in his possession as satisfaction of Salamatof Air Park Subdivision Owners, Inc.'s (the "Association") monetary judgment against him.[1085] Over Schweitzer's contentions that the plane was the property of a third party, the lower court determined that the incomplete plane was salvaged from parts of one of Schweitzer's planes and therefore was his property.[1086] On appeal, Schweitzer argued that the court could not make the ownership decision because it lacked subject-matter jurisdiction.[1087] The supreme court affirmed the lower court's decision, reasoning that the lower court did not need statutory authorization to rule as it did since the court had the inherent power to resolve property ownership disputes.[1088] The court further reasoned that while federal regulations governed the assignment of identification by airplane manufacturers, nothing in the regulations restricted the lower court's power to look beyond the airplane's registration number to determine ownership.[1089] Affirming the lower court's decision, the supreme court held that the determination of aircraft ownership is not preempted by the FAA's authority.[1090]

Stanhope v. Stanhope

In *Stanhope v. Stanhope*,[1091] the supreme court held that in an equitable division of marital assets proceeding, it is reasonable to award a contested marital residence to the party with the ability to afford for the property's upkeep and mortgage.[1092] In 2010, Kenneth divorced his wife, Maryna.[1093] At the time of the divorce, Kenneth was disabled and considered unable to hold a job, while Maryna worked as a janitor.[1094] During proceedings to equally divide the marital property, the superior court found that Maryna, due to her job, was in a better position to pay the home's mortgage and upkeep, awarding her the marital residence.[1095] On appeal, Kenneth argued that the lower court erred by awarding Maryna the residence because he was dependent on the house.[1096] The supreme court affirmed the lower court's decision, reasoning that the lower court did not abuse its discretion weighing the different factors in the case, ultimately awarding the home to the person who could afford to maintain the residence.[1097] Kenneth's poor health,

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[1083] 308 P.3d 1142 (Alaska 2013).
[1084] *Id.* at 1148.
[1085] *Id.* at 1145–46.
[1086] *Id.*
[1087] *Id.* at 1146.
[1088] *Id.* at 1147.
[1089] *Id.* at 1148.
[1090] *Id.* at 1148.
[1091] 306 P.3d 1282 (Alaska 2013).
[1092] *Id*. at 1287.
[1093] *Id.* at 1285.
[1094] *Id*. at 1286–89.
[1095] *Id.* at 1286.
[1096] *Id.* at 1289.
[1097] *Id.*

inability to work and destruction of a number of marital assets were properly weighed against Maryna's recent immigration, modest earning capacity as a janitor and lack of health problems.[1098] Affirming the lower court's decision, the supreme court held that in an equitable division of marital assets proceeding, it is reasonable to award the contested marital residence to the party with the ability to afford for the property's upkeep and mortgage.[1099]

Windel v. Mat-Su Title Insurance Agency, Inc.

In *Windel v. Mat-Su Title Insurance Agency, Inc.*,[1100] the supreme court held that easements on property owned by tenants by the entirety but missing a co-grantor's signature can nonetheless be valid.[1101] Windel purchased a parcel of land from the Davises, tenants by the entirety who jointly had recorded a fifty-foot-wide easement for a public road on the property.[1102] Carnahan purchased land adjacent to Windel's property and upgraded the road.[1103] Windel sued Carnahan for trespass and argued that the easement was invalid.[1104] The supreme court affirmed the lower court's decision, reasoning that despite Mrs. Davis' absent signature on the easement's recording, the easement was valid under the doctrine of ratification.[1105] Mrs. Davis' silence ratified the easement conveyance.[1106] Affirming the lower court's decision, the supreme court held that easements on property owned by tenants by the entirety but missing a co-grantor's signature can nonetheless be valid.[1107]

TORT LAW

Top

Kalenka v. Jadon, Inc.

In *Kalenka v. Jadon, Inc.*,[1108] the supreme court held that lack of direct evidence of a bar patron's intoxication is not necessarily fatal at the summary judgment stage to a claim under the dram shop statute.[1109] Morrell went drinking at a bar and fatally stabbed Kalenka in a fight later that night.[1110] Kalenka's estate representative brought a wrongful death action against the bar, claiming that the bar violated the dram shop statute by serving Morrell alcohol when he was drunk.[1111] Under the dram shop statute, a bar serving alcohol to a drunk patron is civilly liable for damages caused by the patron's intoxication.[1112] Nevertheless, the bar won its summary

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[1098] *Id.*
[1099] *Id.* at 1287.
[1100] 305 P.3d 264 (Alaska 2013).
[1101] *Id.* at 274.
[1102] *Id.* at 267.
[1103] *Id.*
[1104] *Id.* at 268.
[1105] *Id.* at 272.
[1106] *Id.*.
[1107] *Id.* at 274.
[1108] 305 P.3d 346 (Alaska 2013).
[1109] *Id.* at 352.
[1110] *Id.* at 347.
[1111] *Id.* at 348.
[1112] *Id.* at 349.

judgment motion because there was no direct evidence of Morrell's drunken state at the bar.[1113] On appeal, Kalenka's estate argued that a jury could have inferred that Morrell was visibly intoxicated based on his later behavior.[1114] The supreme court reversed the lower court's decision, reasoning that if an issue of material fact remained, summary judgment should not be granted.[1115] Here, according to the court, there was still the question of material fact regarding whether the bar servers should have noticed Morrell's intoxication.[1116] Reversing the lower court's decision, the supreme court held that lack of direct evidence of a bar patron's intoxication is not necessarily fatal at the summary judgment stage to a claim under the dram shop statute.[1117]

Kennedy v. Municipality of Anchorage

In *Kennedy v. Municipality of Anchorage*,[1118] the supreme court held that "garden-variety" mental anguish claims do not waive physician and psychotherapist privileges.[1119] Two former police officers brought claims against the Municipality of Anchorage for racial discrimination, claiming damages for mental anguish.[1120] The Municipality sought discovery concerning the nature of the officers' mental anguish claims, requesting the officers' medical and counseling records.[1121] Subsequently, the lower court granted the Municipality's motion to compel.[1122] On appeal, the officers argued that claims for the sort of mental anguish that any normal person would experience under the circumstances did not place their emotional conditions at issue, and, accordingly, did not waive the privilege that protected these records during discovery.[1123] The supreme court reversed the lower court's decision, reasoning that although discovery of a patient's medical records may be compelled when serious psychological conditions such as depression are claimed, similar compulsion would not be granted for garden-variety mental anguish claims, such as claims of anger, disappointment and sadness.[1124] Reversing the lower court's decision, the supreme court held that "garden-variety" mental anguish claims do not waive physician and psychotherapist privileges.[1125]

Lum v. Koles

In *Lum v. Koles*,[1126] the supreme court held that unlawful entry by a police officer does not make any subsequent use of force per se unreasonable.[1127] After receiving a domestic disturbance emergency telephone call from a third party, police officers entered the Lum's apartment without

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[1113] *Id.* at 350.
[1114] *Id.*
[1115] *Id.*
[1116] *Id.*
[1117] *Id.* at 352.
[1118] 305 P.3d 1284 (Alaska 2013).
[1119] *Id.* at 1284.
[1120] *Id.* at 1285.
[1121] *Id.* at 1286.
[1122] *Id.*
[1123] *Id.* at 1287.
[1124] *Id.* at 1290–92.
[1125] *Id.* at 1284.
[1126] 314 P.3d 546 (Alaska 2013).
[1127] *Id.* at 555.

knocking or announcing their presence.[1128]An altercation ensued and the police officers pepper sprayed and handcuffed Daniel Lum.[1129] After the Lums sued the officers for excessive force and unlawful entry, the lower court granted summary judgment for the officers based on qualified immunity.[1130] On appeal, the Lums argued that the unlawful entry and subsequent acts of force should be considered together, defeating the officers' qualified immunity by making their use of force per se unreasonable.[1131] The supreme court affirmed the lower court's decision, reasoning that, in an excessive force analysis, the court must look solely at the use of force at the time the force was applied.[1132] Thus, according to the court, unlawful entry does not make applied force per se unreasonable and, consequently, the force ultimately used here was reasonable at the time it was applied.[1133] Affirming the lower court's decision, the supreme court held that unlawful entry by a police officer does not make any subsequent use of force per se unreasonable.[1134]

Maness v. Daily

In *Maness v. Daily*,[1135] the supreme court held that qualified immunity protected state troopers from excessive force claims.[1136] Maness had fled from state troopers, who pursued him until a police department officer shot him non-fatally.[1137] Subsequently, Maness brought claims of excessive force against the troopers.[1138] Finding the troopers were public servants protected by qualified immunity, the lower court granted summary judgment.[1139] On appeal, Maness argued that officers may be liable for excessive force if they violate the Fourth Amendment by provoking a violent confrontation.[1140] The supreme court affirmed the lower court's decision, reasoning that qualified immunity protected police officers' exercise of discretionary functions.[1141] The court further reasoned that, regarding excessive force claims, the officer's conduct must be objectively reasonable or he must reasonably believe his conduct was lawful from the perspective of a reasonable officer.[1142] Here, the troopers' actions were objectively reasonable.[1143] Affirming that lower court's decision, the supreme court held that qualified immunity protected state troopers from excessive force claims.[1144]

[1128] *Id.* at 551.
[1129] *Id.*
[1130] *Id.* at 552.
[1131] *Id.* at 552, 554.
[1132] *Id.* at 554.
[1133] *Id.* at 554–55.
[1134] *Id.* at 555.
[1135] 307 P.3d 894 (Alaska 2013).
[1136] *Id.* at 903.
[1137] *Id.* at 897–98.
[1138] *Id.* at 899.
[1139] *Id.*
[1140] *Id.* at 902.
[1141] *Id.* at 901.
[1142] *Id.*
[1143] *Id.* at 903.
[1144] *Id.*

Wiersum v. Harder

In *Wiersum v. Harder*,[1145] the supreme court held that landowners do not have a duty to their neighbors to prevent unreasonable risks of harm caused by third parties.[1146] Harder brought a timber trespass action against his neighbors, the Wiersums, seeking damages after he discovered that the Wiersums had cut down trees on his property.[1147] In their answer, the Wiersums filed a third-party complaint against a another neighbor, Wietfeld, alleging that she negligently misrepresented to the Wiersums that she owned the property in between her home and their home and granted them permission to cut down the trees.[1148] The lower court dismissed the claim against Wietfeld holding that she did not owe a duty to the Wiersums.[1149] On appeal, the Wiersums argued that Wietfeld was liable because she negligently misrepresented or failed to disclose information to the Wiersums and that Wietfeld owed a broad duty to her neighbors to prevent unreasonable risks of harm.[1150] The supreme court affirmed the lower court's decision, reasoning that claims for negligent misrepresentation and failure to disclose require a business transaction between the parties, which was not present in this case.[1151] The court further reasoned that Wietfeld owed no broad duty of care to her neighbors since there was no statute, regulation, contract or case law supporting such a liability theory.[1152] Affirming the lower court's decision, the supreme court held that landowners do not have a duty to their neighbors to prevent unreasonable risks of harm caused by third parties.[1153]

[1145] 316 P.3d 557 (Alaska 2013).
[1146] *Id.* at 566–67.
[1147] *Id*. at 560.
[1148] *Id.*
[1149] *Id.* at 563.
[1150] *Id*.
[1151] *Id.* at 563–66.
[1152] *Id.* at 566.
[1153] *Id.* at 566–67.